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SUPREME COURT OF THE UNITED STATES.

No. ~~148.~~ 71.

JESSE HOYT, PLAINTIFF IN ERROR,

vs.

HENRY SHELDEN, EX'OR OF ABRAHAM G. THOMPSON, DEC'D, AND THE LONG ISLAND RAILROAD COMPANY.

IN ERROR TO THE SUPERIOR COURT OF THE CITY OF NEW YORK.

G. S. GIDEON, Printer, No. 511 Ninth street, Washington, D. C.

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Superior Court of the City of New York.

JESSE HOYT
v.
HENRY SHELDEN, Executor of ABRAHAM G. THOMPSON, deceased, and others.

CLERK'S OFFICE,
Superior Court of the City of New York.

I, George T. Maxwell, Clerk of the Superior Court of the City of New York, having compared the annexed copies of judgment of 4th March, and refiled 4th day of April, 1857, notice of appeal therefrom to the General Term, case on appeal, judgment of reversal and order for new trial of General Term, 3d July, 1858, and notice of appeal therefrom to the Court of Appeals, in the above entitled action, with the originals on file in this office, do certify that the same are correct transcripts therefrom, and of the whole of said originals.

In witness whereof, I have hereunto subscribed my name, and affixed the seal of the Superior Court of the City of New York, this 27th day of July, A. D. 1858.

[L. S.]

GEORGE T. MAXWELL, *Clerk.*

JESSE HOYT
v.
HENRY SHELDEN, Executor of the Will of ABRAHAM G. THOMPSON, deceased, impleaded with others.

Copy of Judgment Roll.

Supreme Court, in Equity.—Bill of Complaint.

To the Supreme Court of the State of New York, in Equity: Humbly complaining, showeth unto this Court, your orator, Jesse Hoyt, of the city of New York, counsellor at law, that on the 31st day of December, in the year 1824, the Legislature of the State of New Jersey passed an act entitled "An Act to incorporate a Company to form an artificial navigation between the Passaic and Delaware Rivers," the preamble to which sets forth, that "Whereas, the construction of a canal to unite the River Delaware, near Easton, with the tide waters of the Passaic, will be of great public benefit

and advantage to the people of New Jersey; now, therefore, to secure to the State the results of this public work, and also as an inducement to a company to engage in this important undertaking, and in consideration of the risks and expenditures which they may encounter in its execution and operation,"—therefore the said Legislature enacted, that "Jacob Thompson and others should be, and were thereby, incorporated by the name of The Morris Canal and Banking Company," with the privileges and immunities in the said act described, a copy of which said act is hereto annexed, as also copies of several amendments and additions to said original act, and which your orator craves to make and have considered as part of this his bill of complaint.

And your orator further shows, that soon after the passage of the said act of 31st December, 1824, hereinbefore referred to, such proceedings were had by the said Morris Canal and Banking Company, as that the said Company commenced the construction of the said canal from the Passaic River at Newark, in the said State of New Jersey, to the Delaware River opposite the borough of Easton in the State of Pennsylvania, which said canal was finished and put in operation about the year 1831; and the said Company also commenced the business of banking, with a capital stock for that purpose of $100,000, soon after the passage of said last mentioned act; and such proceedings were subsequently had, that in or about the month of December, in the year 1831, the banking capital of said Company was increased to the sum of one million dollars.

And your orator further shows, that at a subsequent period, and about the year 1836, the said Company completed their said canal from the said city of Newark to Jersey City, the whole cost of which, from the Delaware to the Hudson River, was about the sum of four millions of dollars. That in the year 1838, the gross receipts on said canal were about the sum of $106,000; and in the year 1839, they were about the sum of $71,000; and in the year 1840, about the sum of $43,000; and in the year 1841, the said canal yielded little or no revenue, but was undergoing repairs.

And your orator further shows, that in or about the month of December, 1836, the said Company leased the said canal and its appurtenances to an incorporated company in the State of Pennsylvania, for a period of five years from the first day of said month of December, the better to enable the officers and directors of said Morris Canal and Banking Company to devote their time and abilities to the banking business of said Company, in which, shortly before the time last mentioned, the said officers and directors had, in the name of said Company, largely engaged, and to such an extent as that there was due to said Company on the 1st February, 1837, in bills receivable, loans, and other commercial contracts, near the sum of five millions of dollars, a very large amount of which was wholly lost to said Company, and the said Company was thereby rendered insol-

vent in fact, and also within the meaning of the act of the State of New Jersey, passed on the 16th day of February, 1829, and entitled "An Act to prevent frauds by incorporated companies."

And your orator further shows, that on the 24th day of April, 1834, the Legislature of the State of New York passed "An Act to incorporate the Long Island Railroad Company."

And in pursuance of the provisions in said act contained, the said Company became organized and went into operation; and on the second day of April, 1836, the said Legislature passed another act in relation thereto, entitled "An Act to authorize the demise of The Brooklyn and Jamaica Railroad to the Long Island Railroad Company." And on the 20th day of April, 1839, the said Legislature passed another act in relation to said Company, entitled "An Act to amend the charter of the Long Island Railroad Company;" and on the 29th day of April, 1841, the said Legislature passed another act in relation to said Company, entitled "An Act to aid in the construction of the Long Island Railroad;" all of which last-mentioned acts were accepted by said Company; which said several acts your orator craves leave to make part of this his bill of complaint, and to refer to the same or to such parts thereof as is or are material or necessary, and to make such proof thereof as may be required by this honorable Court.

And your orator further shows, that for a long period prior to the first day of November, 1839, to some time in the year 1847, George B. Fisk was president and the active manager of the said The Long Island Railroad Company.

And your orator further shows, that in the course of the lawful dealings between the said Morris Canal and Banking Company and the said The Long Island Railroad Company, the said Railroad Company became indebted to the said Canal and Banking Company in the sum of about sixty thousand dollars; and to secure the payment thereof, the said Railroad Company, in pursuance of the power in the said act of incorporation granted, and by order of the board of directors of said Railroad Company, on the third day of November, in the year 1839, executed and delivered to the said The Morris Canal and Banking Company, a mortgage, signed by George B. Fisk, as president, upon "all the following described goods and chattels, viz.: 3 locomotive engines with tenders, viz.: Ariel, Hicksville, and Post Boy, 17 passenger cars, 41 burden or freight cars, 3 baggage cars, 5 turning tables, 2 cranes for hoisting, 2 sets of blacksmith's and engineer's tools, 15 tons railroad iron, 10 tons refuse and old iron, 2 sawing machines, 18 horses, 9 sets of harness, and 100 cords of wood;" a copy of which said mortgage was filed in the office of the Clerk of the County of Kings, about the 23d day of said month of November, 1839, where the same now remains, and to which, or a certified copy thereof, for greater certainty in this behalf, your orator craves leave to refer.

And your orator further shows, that at a meeting of the board of directors of the Morris Canal and Banking Company, had on the 25th of June, 1840, the said George B. Fisk was nominated as a director of the said last-named Company; and at a subsequent meeting of said board of directors, that is to say, a meeting of said board held on the 22d day of September, in the said year 1840, such proceedings were had, that the said George B. Fisk was informed that he had been elected a director of said last-named Company, and the said George B. Fisk, upon such information accepted of said appointment; and on the 15th day of the month of October following, he the said George B. Fisk acted in the capacity of such director of said Company, and met with a portion of said directors, purporting to act as a board of the same; and he the said George B. Fisk took upon himself the responsibility of such director, and thereupon investigated and became acquainted with the affairs and condition of said Company, and he continued as such director until the affairs of said Company went into the hands of receivers as hereinafter mentioned.

And your orator further shows, that prior to the said third day of November, 1839, the said Morris Canal and Banking Company became largely indebted to the State of Michigan, one of the United States of America, by reason of the connection of said Company with what was called the five million loan of said State, and which said debt the Company was unable to pay, because it had long prior to the day last aforesaid became, and at all times thereafter continued to be insolvent; and so the said State of Michigan, through its proper officers and agents well knew. But nevertheless the said State of Michigan, through its said officers and agents, made efforts to collect said debt so due from said Morris Canal and Banking Company, and one Robert Stuart, Esq., the then Treasurer of said State, under and in pursuance of the powers and authority in him vested, visited the office of said Company with the view of securing, or attempting to secure said debt, at sundry times during said year 1840, and after negotiating for some months with the president of said Company, with the view of obtaining security for said debt, and failing to obtain such security, the said Robert Stuart caused a bill of complaint to be drawn against the said Company with a view of filing the same in the Court of Chancery of the State of New Jersey, which said bill the said Robert Stuart swore to on the 23d day of October, 1840, before one of the masters of the Court of Chancery of said State of New Jersey, the said master having authority to administer oaths in such case.

And your orator further shows, that in said bill, among other things it is stated, under the oath of said Robert Stuart, the Treasurer of said State, as follows:

"And this complainant further shows unto your excellency, that the said Morris Canal and Banking Company have become and are insolvent, and did become so insolvent on the first day of March last, within the true intent and meaning of the act of the Legislature of

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the State of New Jersey, passed on or about the 16th day of February, 1829, entitled An Act to prevent frauds by incorporated companies."

And the said bill further stated—"That the said Edward R. Biddle, President of said Company, has admitted and declared to the said Robert Stuart, treasurer of the State of Michigan, that the said Company could not at present pay the said instalment due to this complainant or any part thereof, or the said debt due from them to the said State of Indiana, or the interest on the same, or the interest due on said large debts in Europe before mentioned, for the want of funds."

And the bill also alleges as follows:

"And this complainant further shows unto your excellency, that this complainant has been informed and verily believes and charges the fact to be, that the said Company, the directors and officers thereof, have, since the said Company became insolvent, as hereinbefore stated, sold, conveyed, assigned, and transferred to divers persons and bodies politic and corporate, and especially to the State of Indiana, the estate, effects, choses in action, goods, chattels, rights, credits, lands, and tenements of the said Company, and which sales, conveyances, assignments, and transfers, this complainant is advised and insists, are contrary to the statute in such case made and provided, and are inoperative and void."

And your orator further shows, that the said bill further alleges as follows:

"That the said Company are indebted to Abraham Richards and David Shelden, upon a bond drawn by the said Company for $35,000, due and payable on the first day of March last past, and which bond, when the same became due and payable, was duly presented for payment, and payment thereof was demanded at the banking-house of the said Company within the usual and proper hours of business, and payment thereof was neglected and refused, and a suit has since been commenced thereon by said Abraham Richards and David Shelden against said Morris Canal and Banking Company." And the said bill also further alleged, "That the said Company have suspended their ordinary banking business for want of funds to carry the same on."

And among the prayers of said bill was one for an injunction against, and the appointment of receivers for, said Morris Canal and Banking Company; and another of said prayers was, "That all sales, conveyances, assignments, transfers, and payments made by the said Company of its estates, effects, choses in action, goods, chattels, rights, credits, moneys, lands, and tenements, since the first day of March last past, may be set aside, and by a decree of this court declared inoperative and void."

And your orator avers that said statements so made in said bill of complaint, so drawn and sworn to as aforesaid, were and each of them

was true; and your orator charges that the said State of Michigan had full notice of the insolvency of the said The Morris Canal and Banking Company, and of the fact of its having suspended payments and its ordinary banking business, and that the said Company had no lawful right, power, or authority to make any sale, transfer, or conveyance of any of its property, debts, credits, or effects to the said State of Michigan, and that any conveyance so taken would have been utterly void, as contrary to the provisions of the said act of the State of New Jersey, entitled "An Act to prevent frauds by incorporated companies," passed the 16th day of February, 1829, and of which the seventh section is in the following words:

"Whenever any such incorporated company shall hereafter become insolvent, or shall suspend the ordinary business of the said company for want of funds to carry on the same, it shall not be lawful for the directors or managers of the said company, or for any officer or agent of the said company to sell, convey, assign, or transfer any of the estate, effects, choses in action, goods, chattels, rights or credits, lands or tenements of the said company; nor shall it be lawful to make any such sale, conveyance, assignment, or transfer, in contemplation of the insolvency of any such company, and every such sale, conveyance, assignment, or transfer shall be utterly null and void as against creditors—provided always, that in case of a bona fide purchase for a valuable consideration before the said company shall have actually suspended the ordinary business of the said company as aforesaid, by any person having no knowledge, information, or notice of the insolvency of said company, or of the sale being made in contemplation of the insolvency of the said company, such purchase shall not be invalidated or impeached."

Which said act, and the said last mentioned section thereof, or a properly authenticated copy thereof, your orator craves leave to refer to and to make such proof thereof as the rules and practices of this court shall require; the true construction of which said act and section your orator charges, is, that whenever a bank without funds to redeem its notes, and depending upon individual resources and exertions to provide funds, &c., rather than upon the immediate ability of the institution, is insolvent within the meaning of the act, and that the act requires that the bank should be at all times prepared to discharge all demands presented for payment, and it can never be freed from the charge of insolvency upon any supposed ability of realizing from its means enough to pay its debts at a future day.

And your orator further shows, that notwithstanding the act of the State of New Jersey before referred to and the correct construction put thereon by the said State of Michigan, through its said authorized agent, the Treasurer thereof, and of the utter insolvency of the said Morris Canal and Banking Company, within the knowledge of the said authorized agent of the said State of Michigan, the said Robert Stuart, Treasurer of the said State, and notwithstanding his

knowledge that the said Company had no lawful right, power or authority to sell, convey, assign, or transfer any of its property, debts, credits or effects, prevailed upon the executive officers of the said Morris Canal and Banking Company, without the knowledge, assent, or approbation of a majority of the directors of said Canal Company, to agree to assign the said debt due from the said The Long Island Railroad Company to the said Morris Canal and Banking Company, which had, on the 9th day of December, 1840, *been reduced to the sum of about* $40,000, and accordingly the said executive officers, that is to say, the president and cashier of the said Morris Canal and Banking Company, *did, on the said 9th day of December*, 1840, purport to enter into an agreement in the name of the said Morris Canal and Banking Company, with the said Robert Stuart, as such treasurer, and for that purpose did execute and deliver to him in the name of the said State of Michigan, a paper writing called an agreement, signed by the said president and cashier of said Morris Canal and Banking Company, under the common seal of the said Company thereto affixed, by which the said debt due from the said The Long Island Railroad Company, to the said Morris Canal and Banking Company, and secured by the mortgage aforesaid, *was assigned to the said State of Michigan*, as a collateral security for the debt due from said Morris Canal and Banking Company to said State of Michigan, a copy of which said agreement is hereto annexed, marked Schedule A, and to which your orator craves leave to refer for greater certainty in this behalf.

And your orator further shows, that the said State of Michigan treated the said agreement as a mortgage on the part of the said Morris Canal and Banking Company to said State of the assets and property enumerated in said agreement, and for that purpose caused the same to be recorded in Liber 242 of mortgages, page 600, in the office of the Register of the City and County of New York, by reason whereof your orator charges that the same was notice to all persons and parties of the nature and contents of said agreement; and also, that Abraham G. Thompson, hereinafter mentioned, and the said George B. Fisk, had actual and personal knowledge, information or notice of said agreement, and of its nature and contents, as had also the said The Long Island Railroad Company such knowledge, information or notice as last aforesaid.

And your orator charges, that the said agreement of the said 9th of December, 1840, between the said Morris Canal and Banking Company, and the said State of Michigan, so far as concerns the property therein described, was by operation of law, but a pledge by the said Morris Canal and Banking Company of said property to said State of Michigan for a pre-existing debt, and the said State of Michigan irrespective of the statute of said State of New Jersey, entitled "An Act to prevent frauds by incorporated companies," acquired but a special interest in the said property, without power to

sell or dispose of the same; but said property was subject to sale by the proper action of any creditors of said Companies, or otherwise to be controlled according to law for the benefit of all the said creditors. And your orator charges, that said Morris Canal and Banking Company, or the receivers of said Company hereinafter mentioned, had no knowledge or notice of the intended sale of the said debt against the said Long Island Railroad Company or the security therefor by the said State of Michigan. And your orator also charges, that the said sale by the said State of Michigan, passed no title to the said debt or the security therefor to the purchaser of the same.

And your orator further shows, that by a clerical error, "number nine," in said agreement is called "An assignment of a judgment on the Long Island Railroad," &c., whereas, it was in fact the mortgage hereinbefore referred to.

And your orator further shows, and so charges the fact to be—that the said executive officers of said Morris Canal and Banking Company, that is to say, the said president and cashier thereof, who so signed the said agreement, were trustees for the stockholders and creditors of said Morris Canal and Banking Company, and held possession of the said assets and property so enumerated and described in said agreement in a fiduciary capacity, without any express or implied right to dispose of the same, or part with the possession thereof, without the assent of the said The Morris Canal and Banking Company, or the persons properly vested with the same, which assent was never given or in any way obtained; and the said State of Michigan held no right, claim or title thereto, which could be transferred to any person upon any consideration, whether with or without notice of all the facts and circumstances connected with the same, and no purchaser thereof from the said State of Michigan, though paying a valuable consideration for said debt or mortgage, could have or acquire any title thereto as against the creditors of the said Morris Canal and Banking Company, or of any person who might thereafter become by operation of the laws of New Jersey legally vested with the same.

And your orator further shows, that on or about the 31st March, 1840, the Legislature of the said State of Michigan, passed an act in relation to the five million loan of said State, and in pursuance of the provisions of said act, the said Robert Stuart, on the 12th of January, 1841, made his report to the Governor of the said State, relating to his action and agreement with said officers of said Morris Canal and Banking Company, an extract from which is as follows:

"Sir:

"By an Act of the Honorable, the Legislature of this State, approved March 31, 1840, the treasurer is 'required to ascertain whether any portion of the balance becoming due upon the five mil-

lion loan, is not well secured, and to take such measures as he may deem for the interests of the State in relation to the same.'

"In obedience to this authority, and in order promptly to discharge the responsibility thus devolved upon me, I left this city for New York, on the 18th of April last, when I ascertained that the bond of the Morris Canal and Banking Company, on which there is yet due to the State about $823,000, had been protested for non-payment of the April instalment, and also that the Company had failed to pay several other creditors previous to that time. On my personal application for the amount due to the State, I was informed that they were then unable to meet their engagements. Of this, from various sources, I was fully convinced. My efforts were therefore immediately directed to obtain adequate security for the ultimate payment of the whole debt. After an unsuccessful negotiation during several weeks for this purpose, they stated to me that their assets, or securities, being mostly embarrassed, it was impossible for them to give such unincumbered security as I demanded, but that being actively engaged in realizing them, if I would allow them about eight weeks' delay, they hoped to be able to meet my demands."

And your orator further shows, that accompanying said report was a copy of the agreement of the said 9th day of December, 1840, and a copy of said bill in Chancery, so sworn to by the said Robert Stuart as aforesaid, which said report of said Treasurer, with the papers accompanying the same, that is to say, the copy of said agreement and said bill in Chancery, were, on the 14th January, 1841, communicated by the said Governor of said State of Michigan, by special message, to the Senate and House of Representatives of said State, and were printed by George Dawson, printer to said State, and were published by order of said Legislature, among the joint documents of the two houses thereof, as a part of the public records and proceedings of said State, and thereby became and were and are public notice to all persons and parties of the facts and circumstances therein contained, and your orator craves leave to refer to them and to make such proof thereof as this Court shall direct.

And your orator further shows, that on the said 9th day of December, 1840, the said Morris Canal and Banking Company were indebted over the sum of five millions of dollars, and had, as was truly stated by the said State of Michigan, through the oath of said Robert Stuart, its Treasurer, as has hereinbefore been referred to, on the day last aforesaid, suspended its ordinary business and had become insolvent in point of fact, and also within the meaning of the act of the State of New Jersey, hereinbefore referred to, as having passed the 16th day of February, 1829, and entitled "An Act to prevent frauds by incorporated companies."

And your orator further shows, that after said pretended assignment from the Morris Canal and Banking Company to the said State of Michigan, and after the said treasurer of said State had reported

the same to the Governor of said State, and after the said Governor had communicated the same and the proceedings connected therewith to the legislature of said State, and by it printed and published, a new effort was made by the agents of said State and the officers of said Morris Canal and Banking Company, to obtain additional security from the said the Long Island Railroad Company for said debt, and accordingly the officers of said Morris Canal and Banking Company obtained from the said Railroad Company an additional mortgage, bearing date about the 6th day of March, 1841, upon all their several strips, pieces, or parcels of land, in counties of Queens and Suffolk, on which the railroad is built and may be built, with the rails laid down thereon, or thereafter to be laid, and the rights and privileges appertaining thereto, and also all the land in said counties belonging to said parties thereunto of the first part, and the depots, car-houses, engine-houses, shops, stables, and all other buildings thereon erected, and the rights and privileges and appurtenances thereto belonging; and that said mortgage was, on 26th April, 1841, assigned to said State of Michigan by the said officers of said Morris Canal and Banking Company, as a further security for said debt so due to the State of Michigan, without the authority of the directors thereof, though the said assignment fraudulently represents that the same was made in pursuance of a resolution of the board of directors of said Company, and said mortgage and the assignment thereof were recorded in the office of the clerk of the county of Kings, April 28, 1841, in lib. 68 of mortgages, p. 417, a copy of which said assignment from said Morris Canal and Banking Company to said State of Michigan is hereto annexed, marked Schedule B.; and your orator craves leave to refer to the original thereof in the hands or under the control of said Abraham G. Thompson, and which your orator prays may be discovered and produced by him when the same shall be discovered and produced, or to a duly authorized copy of said record ready to be produced and proven by your orator, when and as this Court shall direct.

And your orator further shows, that on or about the 12th day of May, in the year 1841, Abraham Richards and David Selden, of the city of New York, recovered a judgment in the Supreme Court, of the State of New York, against the Morris Canal and Banking Company for about the sum of $\$38{,}631\frac{30}{100}$ damages, and costs, upon a bond or obligation made by said Company, and which fell due and was protested for non-payment about the first day of March, 1840, and that, on the 7th day of September, of the same year, the same plaintiffs also recovered against the same Company judgment in the Supreme Court of the State of New Jersey, in pursuance of the laws of said State, for the sum of $\$39{,}529\frac{49}{100}$, and that, on the day last mentioned, Henry Yates, Thomas G. Talmadge, and Wm. C. Noyes, recovered a judgment in the last mentioned court against the said Company, for the sum of $11,245 19, which said last-mentioned

judgment was subsequently assigned to the said David Selden, and that the said Richards and Selden, on the 28th of December, 1841, recovered in one of the said courts of New Jersey, of competent jurisdiction and authority under the laws of said State, a certain other judgment against the said Morris Canal and Banking Company for the sum of $16,767 86, and also, that, at about the same time, other judgments were recovered in the courts of said State, of like authority and jurisdiction, against said Morris Canal and Banking Company by other parties, which were subsequently assigned to the said Richards and Selden, or said David Selden, the records of which said judgments are now on file in said several courts, the proof whereof your orator craves leave to make at the proper time, on which said judgments there now remains due the sum of $50,000, or thereabouts.

And your orator further shows, as he has before shown, that the said Morris Canal and Banking Company had for a long time before the recovery of said judgments been utterly insolvent, and had suspended its ordinary business, and its business and affairs had at the time last stated become so desperate, that at a meeting of its directors, on the 24th day of December, 1841, a committee from said board, consisting of James B. Murray, Abraham Kinney, and the said George B. Fisk, were appointed to investigate its said affairs, and to make report thereon: and the said committee immediately entered upon the duties of said appointment, and on the third day of November, 1841, they reported the result of their investigations, accompanied by a schedule of the assets of said Company, and its liabilities, for the purpose of proving the utter insolvency of said Company; and among other things the said committee said, that "the Bank never recovered from the transactions of 1836 and 1837, when the prospects of large profits caused by dealing in foreign and domestic exchanges, entailed upon it losses which have proved to be the primary cause of its present condition."

And your orator further shows, that the said Abraham Richards and David Selden, some time in the latter part of the year one thousand eight hundred and forty-one, filed their bill of complaint in the Court of Chancery of the State of New Jersey, duly instituted and of competent authority and jurisdiction under the laws of said State, against the said Morris Canal and Banking Company, setting forth the insolvency of said Company, and praying for an injunction and receiver, under and by virtue of an act of the Legislature of said State of New Jersey, hereinbefore alluded to, and entitled, "An Act to prevent frauds by Incorporated Companies," passed the sixteenth day of February, one thousand eight hundred and twenty-nine, one section of which said act is in the following words, viz.:

"It shall and may be lawful for the Court of Chancery, if the circumstances of the case and the ends of justice require it, at the time of ordering said injunction, or at any other time afterwards

during the continuance of the said injunction, to appoint a receiver or receivers, or three trustees with full power and authority to demand, sue for, collect, receive, and take into their possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description belonging to said company at the time of their insolvency or suspension of business as aforesaid; and to sell, convey, or assign all the said real or personal estate; and to pay into the Court of Chancery all the moneys and securities for money arising from such sales, or which the said receiver or receivers, or trustees, shall collect or receive by virtue of the authority vested in them, to be disposed of by the said receiver or receivers, or trustees, from time to time under the order of the said court among the creditors of the said company; first making to the receiver or receivers, or trustees, such reasonable compensation as the Chancellor may deem just and proper, and also deducting the cost of the proceedings in the said Court," which said section your orator craves to make part of this bill of complaint, and give such proof thereof, as well as the said acts of New Jersey, of which said section forms a part, as may be consistent with the rules and practice of this Court.

And your orator further shows,—That such proceedings were held at the suit of said Abraham Richards and David Selden, in said Court of Chancery of said State of New Jersey, against said Morris Canal and Banking Company, that on the 29th day of January, in the year 1842, a decree was entertained therein, of which the following is a copy:

IN CHANCERY OF NEW JERSEY.

Between ABRAHAM RICHARDS, DAVID SELDEN, Complainants, and THE MORRIS CANAL and BANKING COMPANY, Defendants. } On Bill, &c.

Upon opening the matter to the Court by Asa Whitehead, of counsel with the complainants; and it appearing to the Chancellor that the hearing of the application in this case for the issuing of an injunction and the appointment of receivers, in pursuance of the prayer of the complainants' bill, has been postponed from time to time, by agreement of parties, till this day, being the twenty-ninth day of January, in the year of our Lord 1842; and upon reading the complainants' bill of complaint, and the affidavits thereto annexed, by which the Chancellor is satisfied of the sufficiency of the application made by the complainants, and also of the truth of the facts and allegations therein contained; and it further appearing to the satisfaction of the Chancellor, the said The Morris Canal and Banking

Company has become insolvent, and is not about to resume its business in a short time with safety to the public and advantage to the stockholders: It is thereupon, on this twenty-ninth day of January, in the year of our Lord 1842, aforesaid, at a regular term of the Court of Chancery, holden at Trenton, ordered, adjudged, and decreed, by William Pennington, Governor and Chancellor of the State of New Jersey, that a writ of injunction do issue out of and under the seal of this court, directed to the said The Morris Canal and Banking Company, and its officers and agents, thereby restraining the said Company, and its officers and agents, from exercising any of the privileges or franchises granted by the act incorporating the said Company, or by any supplement to such act or acts in addition thereto, and from collecting and receiving any debts, or from paying out, selling, assigning, or transferring any of the estate, money funds, lands, tenements, or effects of the said Company, until this court shall otherwise order.

And it further appearing to the Chancellor that the circumstances of this case and the ends of justice require it, the Chancellor doth hereby appoint Dudley S. Gregory, Elias B. D. Ogden, and Stephen P. Brittan, Esquires, receivers, with full power and authority to demand, sue for, collect, receive, and take into their possession, all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description belonging to the said The Morris Canal and Banking Company, at the time of their insolvency or suspension of business, as set forth in said bill, and to sell, convey, and assign all the said real and personal estate, and to pay into this Court all the moneys and securities for money arising from such sales, or which the said receivers shall collect or receive by virtue of the authority vested in them—to be disposed of by the said receivers from time to time, under the order of this court, among the creditors of the said Company, first making to the receivers such reasonable compensation as the Chancellor may deem just and proper, and also deducting the cost of the proceedings in this Court. That the said receivers shall first take and subscribe the oath or affirmation directed in and by the act entitled, 'An Act to prevent frauds by Incorporated Companies,' and that they shall be deemed and taken to be receivers for the creditors and stockholders of the said Company, with full power and authority, whenever they shall deem it proper, to institute suits in law or equity in their name, as receivers as aforesaid, for the recovery of any estate, real or personal, debts, rights in action, damages, and demands, whatsoever and wheresoever, existing in favor of the said Company at the time of its insolvency, or suspension of business as aforesaid, or accruing subsequent thereto; and that the said receivers be also invested with all the powers and authority given and granted in and by the act last mentioned, and have liberty to apply to this Court as occasion may require. And all

other directions concerning the said receivers, are to be subject to the further orders of this Court.

"WM. PENNINGTON, *C.*"

By which said decree your orator insists and charges that all the property, effects, rights of action, and assets which were of said Company, both in law and equity, at the time of its first becoming insolvent, were invested in said receivers, with full power in the same to sell, dispose of, bargain for, and part with as in the discretion of said receivers shall be deemed meet and proper; and that upon the sale by said receivers of such property, effects, rights of action, and assets, the vendee or vendees of said receivers, took, and was or were possessed of all the rights therein that belonged to said receivers in relation thereto, and that among the effects, rights of action, and assets, so conveyed to and possessed by said receivers, was the debt due said Morris Canal and Banking Company by the said The Long Island Railroad Company hereinbefore referred to, and said securities for the same.

And your orator further shows, that the said Dudley S. Gregory, named in the said order, declined to accept the said appointment of receiver, and a few days thereafter Alexander C. M. Pennington, Esq., was appointed in his place, who accepted the said office, as did also the said Elias B. D. Ogden, and Stephen P. Brittan, who took the oath prescribed by law, who then and there became and were possessed of and invested with, in pursuance of the said statute, and the order above set forth, of the said Court of Chancery founded thereon, of all the property, real, personal, and mixed, and of the effects and assets belonging to the said Morris Canal and Banking Company, among which was the debt due said Canal Company from the said The Long Island Railroad Company, before and herein referred to, and all the property, right, title, and interest of the said Company therein, at the time of their said insolvency or suspension of payments hereinbefore mentioned, and the security therefor.

And your orator further shows, and so charges the fact to be, that the making of said decree was a matter of public notoriety, and the appointment of said receivers was published in the newspapers in the State of New Jersey and in the city of New York, and the operation of said decree was a transfer of the assets and property referred to therein, to such receivers, as bona fide purchasers thereof, for a valuable consideration, and arrested and suspended the right of any and all persons who had acquired possession of any of the property of said Morris Canal and Banking Company, after it had so become insolvent, from transferring the same, and especially the said debt so due to it from the said The Long Island Railroad Company, and among other reasons, because of the assent of said Company to transfer the same had never been obtained, and any assignee or purchaser thereof, subsequent to that time, could not become a bona fide purchaser thereof,

even without notice of the transaction hereinbefore referred to. And your orator further charges, that the appointment of said receivers was an equitable writ of execution against all of said assets of said Morris Canal and Banking Company.

And your orator further shows, that it was a long time after the appointment of said receivers before they ascertained that the said State of Michigan had obtained the possession of the mortgages hereinbefore referred to; and the said receivers had no notice of the intention of said State to dispose of the same, or of any action on its part to foreclose the equity of redemption of the said Canal Company therein.

And your orator further shows, that on the 17th February, 1842, the said State of Michigan duly passed an act, entitled "An Act to provide for the collection of certain assets transferred to the State, and for other purposes;" the first section of which is in the following words, viz.:

"That the Auditor-General, State Treasurer and Secretary of State, for the time being, be and the same are hereby constituted trustees in behalf of the State, to take charge of the assets assigned to the State by the Michigan State Bank, and such other assets or property as may have been or shall hereafter be conveyed to the State in payment of other debts, or become the property of the State as collateral security, securities, or otherwise." That, by the third section of said act, it is provided, said trustees "shall have power to lease, sell or convey any assets, or property assigned to the State as aforesaid;" which said act, your orator prays, may be deemed a part of this his bill of complaint, and proof of which your orator also craves liberty to make, as may be necessary.

And your orator further shows, that notwithstanding the knowledge of the said Long Island Railroad Company, and especially its then President, the said George B. Fisk, that the said State of Michigan had no legal title to or lawful authority to control the said debt so due to said Morris Canal and Banking Company, and the said receivers thereof, yet at the solicitation of the said State of Michigan, or its proper officers, hereinbefore referred to, the said The Long Island Railroad Company, by the said George B. Fisk, its President and active manager, did, on the 8th day of July, 1842, receive a surrender of the mortgage on the chattels of the said Long Island Railroad Company hereinbefore mentioned from the said State of Michigan, and execute to the said State of Michigan a new mortgage on the same chattels referred to in the said mortgage of the said third day of November, 1839, and which said two latter mortgages were signed by the said George B. Fisk, as President of said Long Island Railroad Company, by order of the board of directors thereof, the said George B. Fisk well knowing that said State of Michigan had no right to receive the same, and that the said mortgage and the

debt secured thereby of right belonged to the said receivers of said Morris Canal and Banking Company, hereinbefore mentioned.

And your orator further shows, that some time in the spring of 1843, Abraham G. Thompson, of the city of New York, in behalf of himself and the said George B. Fisk, entered into negotiations with Charles G. Hammond, Esq., the then Auditor-General of the said State of Michigan, the said Abraham G. Thompson and the said George B. Fisk, well knowing all the circumstances attending the said debt against the said The Long Island Railroad Company, and the circumstances under which the same was assigned to the said State of Michigan by the officers of the said Morris Canal and Banking Company, and the subsequent renewal thereof by said Long Island Railroad Company, for the purchase of the said debt and the security therefor; and the said Abraham G. Thompson, from his familiarity with the concerns of the said The Long Island Railroad Company, and from his connection therewith, heard and knew, as well from the knowledge derived from said George B. Fisk, the president thereof, as from other causes and sources, that the said debt was perfectly good and well secured, and the means of said Railroad Company were perfectly adequate to the payment of the same; which negotiations resulted in an agreement to this effect: that is to say, that a certain notice of sale at public auction should be given and be published in certain newspapers in the city of New York, for a specified time, by authority of said State of Michigan, with the view of foreclosing any equity of redemption of the said Morris Canal and Banking Company, and if the said debt and security should sell for less than the sum of $20,000, the said Abraham G. Thompson and his associate, not made known, were to pay that sum to said State of Michigan, though the same should be bid off for a less sum by said State of Michigan; and in case the same should sell at said public auction for more than the said sum of $20,000, the excess should enure to the benefit of the said State of Michigan; or, in other words, said Thompson and his coadjutor were to buy the same at public auction for $20,000, if the same should not bring more to any other bidder. And your orator charges, that in pursuance of said agreement, the said notice of sale was given, and on the 24th day of May, in said year 1843, said sale took place in pursuance of said agreement and notice, and the said debt and said securities therefor were set up at public auction, and bid off by an agent of the said State of Michigan, for the said sum of $20,000; and by an arrangement in pursuance of a previous understanding to that effect with the said State of Michigan, the said Abraham G. Thompson, for himself and his said associate, took the said bid; and in pursuance of the agreement in respect thereto, the said State of Michigan, by its trustees, in pursuance of the act of the Legislature of said State hereinbefore referred to, that is to say, by Charles G. Hammond, Auditor-General, John J. Adam, Treasurer, and R. P. Elkridge, Secretary of State of said

State of Michigan, on the 30th day of May, in said year, 1843, conveyed the said debt against the said The Long Island Railroad Company and the security therefor hereinbefore referred to, to the said Abraham G. Thompson, in consideration of the said sum of $20,000, and which was recorded the 7th of June, 1843, in the office of the clerk of the county of Kings, in lib. 71 of mortgages, page 91, and a copy of which said conveyance is hereto annexed, marked Schedule C., the original of which is in the possession or under the control of the said Abraham G. Thompson, and which your orator prays may be discovered and produced by him.

And your orator avers and charges, that the said Abraham G. Thompson well knew, or had been informed, when he made the said negotiation with the said trustees of the said State, and when he took a transfer of the said debt and the securities therefor as aforesaid, that the said State of Michigan had become possessed of the said debt so secured by said bond and mortgages in contravention of the laws of the State of New Jersey, and was an illegal holder of the same, and had no lawful right, power, or authority to transfer the same, and could give no lawful title thereto. And your orator further states, that he has been informed, believes, and charges, that the said Abraham G. Thompson bought the said debt and securities upon speculation at the small sum of fifty per cent. on the dollar, of the face of the said bond and mortgages, and that he intended to take, and did take, the chances of realizing the whole sum due on the same, in case the title thereto should prove to be good in the said State of Michigan, or the risk of losing the whole sum paid by him, in case the title to the said debt and mortgages of said State of Michigan should prove worthless; the said Abraham G. Thompson having exacted from the said State of Michigan a covenant that the whole sum of $40,000 was due on said bond and mortgages: and the said State of Michigan did in fact make and execute such covenant, as will fully appear by reference to said conveyance.

And your orator further shows, that soon after the said purchase as aforesaid, the said Abraham G. Thompson called on the said The Long Island Railroad Company, in regard to said debt so due from the said Long Island Railroad Company and the securities therefor, and proposed to surrender up the old securities so far as it related to the mortgage upon the cars and other chattels of said company hereinbefore referred to, and to take a new mortgage in his own name therefor, he, the said Thompson, well knowing that he had no legal title thereto, but with a view of defrauding the bona fide creditors of said Morris Canal and Banking Company, and believing that his fraudulent design could be accomplished by obtaining from said Long Island Railroad Company a new security in his own name, and the said George B. Fisk, from his interest in the said purchase with the said Abraham G. Thompson, being willing to substitute a new mortgage ,in the name of said Abraham G. Thompson, for the old one in

the name of said State of Michigan; and accordingly, on the 15th day of June, in said year 1843, the said substitution of said security was assented to by the said Long Island Railroad Company through the said George B. Fisk, its president and active manager, and a paper writing called a mortgage was thereupon executed on the day last aforesaid, by the said Long Island Railroad Company to the said Abraham G. Thompson, reciting in effect as follows:

"Whereas, on the 6th day of March, in the year 1841, the Long Island Railroad Company did execute to the Morris Canal and Banking Company a mortgage on the personal property hereinafter mentioned, and bearing date on that day, to secure the payment of the sum of $40,000, as mentioned in a certain bond referred to in said mortgage bearing even date therewith in the penalty of $80,000, conditioned for the payment of the said sum of $40,000, with interest on demand."

And whereas, the said mortgage and bond was duly assigned to the State of Michigan by the said Morris Canal and Banking Company, on or about the 26th day of April, 1841:

"And whereas, the said State of Michigan did, on or about the 8th day of July, 1842, surrender to the Long Island Railroad Company the said original mortgage, and receiving one from said Railroad Company in substitute thereof, but subject to all such rights and liabilities as the said original mortgage was subject to:

"And whereas, the said mortgage and bond to the said State of Michigan was duly assigned by its lawful and proper officers, to Abraham G. Thompson, on or about the 30th day of May, 1843.

"And whereas, the said Abraham G. Thompson is desirous of surrendering the said mortgage, and receiving one from the said Long Island Railroad Company in substitution thereof, but subject to all rights and liabilities as the said original mortgage was subject to. Now, therefore, these presents witnesseth."

And which said paper writing proceeds in the form of a mortgage upon all the described goods and chattels enumerated in the said mortgage of the 3d of November, 1839, to the said Morris Canal and Banking Company hereinbefore set forth,—that a copy of said mortgage was duly filed in the office of the clerk of the county of Kings, on the 4th May, 1844, and the original is in the possession, or under the control, of the said Abraham G. Thompson, and that said mortgage has been renewed of record according to law, and on the 5th day of February, 1847, the following memorandums appear on said renewal, so filed in said office of said clerk:

New York, February 5, 1847. I hereby certify that I hold a mortgage upon the real estate of the Long Island Railroad Company, also a chattel mortgage (the within being a copy), as collateral secu-

rity for their indebtedness to me, by bond, the principal of which amounts to $40,000 00
Back and accruing interest on the first May next will amount to $11,235 02

Together, $51,235 02

Of the above there will be due and payable on the 1st May next, of principal $10,000 00
Also of interest same day 2,080 02

$12,080 02

"The remainder with accruing interest will be due and payable at stated periods until 1st May, 1850, the terminus. This notice to commence its year the 15th June next, it being the terminus of the chattel mortgage now on file, its predecessor."

And on which said copy there was the further memorandum on the back thereof.

"*Memorandum.*"

Original mortgage dated 15th June, 1843.
Additional security dated 6th December, 1845.

This mortgage commencing with the expiration of its predecessor, 15th June, 1847, and continuing to 15th June, 1848. And which said copy of said mortgage purports to have been filed in the office of said clerk, on 5th February, 1847.

And your orator further shows, that at the request of the said Abraham G. Thompson, the said Long Island Railroad Company, as a further security for the said debt of $40,000, and the back and accruing interest thereon, and to provide for the diminution of the former security evidenced by said chattel mortgage, by reason of the use, and the wear and tear of the property included in the same, the said Long Island Railroad Company executed, on the 6th day of December, 1845, to the said Abraham G. Thompson, another mortgage on the following chattels of said Long Island Railroad Company, that is to say: on engines, called Abner Chichester, John A. King, Elihu Townsend, Brooks, Fisk, Henry Ruggles, Jacob Little, Derby, Edwin Post, Boston, Crib, with one other engine not named, together with sundry cars, and other chattels; the original of which mortgage was filed in the office of the said clerk of said county of Kings, on the 8th day of said month of December, 1845.

And your orator further shows, that when the said Abraham G. Thompson took the said mortgage in his own name, and dated the said 14th day of June, 1843, he also received the bonds of said Company for said $40,000, the face of said debt, dated the first day of May, 1843, payable one-fourth on first of May, 1847, and one-

fourth on the same day of each succeeding year, with interest at the rate of seven per cent. per annum, and that for the interest due on said debt prior to the said 1st day of May, 1843, the said Thompson receive the bonds of said Company, payable in seven years, with interest at the said rate of seven per cent., which said interest amounts to about the sum of $10,000.

And your orator further shows, that that interest has been paid by the said Railroad Company, on the said debt of $40,000, and the back interest thereon from the said 1st of May, 1843; and the said Company have also paid the said sum of $10,000, one-fourth of said principal sum due on the said 1st day of May, 1847, with a full knowledge of all the facts and circumstances as hereinbefore stated.

And your orator further shows, that on 17th day of December, 1844, your orator bargained with and purchased of the said Abraham Richards and David Selden, the said judgments against the said Morris Canal and Banking Company, as well as for an additional one, in which William S. Nichols appears as plaintiff on the record; also, against the said Morris Canal and Banking Company, recovered in a court of competent jurisdiction and authority, in the said State of New Jersey, docketed about the 12th of November, 1841, for the sum of five hundred and forty-three and eighty-four cents, in which said purchase, your orator then had the one-fourth interest; but your orator took a conveyance for the same, in the name of Skeffington Sanxay, Esq., of the city of New York, counsellor at law, but which said judgments are now solely owned by your orator, he having the entire interest and right of property therein, and the said Skeffington Sanxay has conveyed the same to your orator; and in reference to which, your orator further says, that the same were duly proved before said receivers, as a debt due from said Morris Canal and Banking Company, and that the Court of Chancery of New Jersey, decided in reference thereto, that said judgments were and are entitled to, and have by law a priority of payment from the funds and assets in the hands of said receivers of said Morris Canal and Banking Company, and by virtue of said decision, the said receivers have applied and paid on said judgments, over the sum of ten thousand dollars, and in part payment and satisfaction of the former balance due on the same; and as a further payment on said judgments, the said receivers, by order of the said Court of Chancery of said State of New Jersey, duly and properly obtained and entered, assigned on or about the 15th day of November, 1845, to said Skeffington Sanxay, the debt hereinbefore referred to, due the said Morris Canal and Banking Company, from the said The Long Island Railroad Company, and which the said Skeffington Sanxay subsequently assigned to your orator, he having for a long time before the day last aforesaid, held the same as the agent and trustee of your orator.

And your orator further shows, that Digby V. Bell, Esq., is the present Auditor-General; George B. Cooper, Esq., is the present

Treasurer; and Gideon A. Whittemore, Esq., is the present Secretary of State, of the said State of Michigan, who are, by virtue of the act of the Legislature of said State of Michigan before referred to, the proper representatives of said State, in the matters hereinbefore referred to;. but your orator hereby assents, that said State shall appear in this suit as a defendant, and litigate the rights of your orator, if said State choose so to do.

And your orator further shows, that he has caused the said Abraham G. Thompson, George B. Fisk, and the said The Long Island Railroad Company, to be addressed in a friendly manner, and requested to account to your orator for the said debt of the said Long Island Railroad Company, for the said sum of $40,000, formerly due to the said Morris Canal and Banking Company, and the securities for the payment of the same, as hereinbefore referred to, and the interest thereon, or to account to your orator for the product thereof and the interest thereon, amounting now to about the sum of $65,000, which they ought to have done, but which they wholly refuse to do.

To the end, therefore, that the said Abraham G. Thompson, George B. Fisk, Digby V. Bell, George B. Cooper, Gideon A. Whittemore, and the said The Long Island Railroad Company may, that is to say, the said Abraham G. Thompson, George B. Fisk, Digby V. Bell, George B. Cooper, and Gideon A. Whittemore, severally (without oath, the same being hereby waived), and the said The Long Island Railroad Company, under its corporate seal, true, full, direct, and perfect answers make to all and singular the matters hereinbefore stated and charged, and as fully and particularly as if the same were here repeated, and they thereto severally and specifically interrogated; and your orator prays, that the said Abraham G. Thompson, may, by a decree of this Court, be compelled to assign over to your orator, the said bonds and mortgages taken for the said original debt of $40,000, and the interest thereon of the said The Long Island Railroad Company, or any other securities or evidences of debt, taken therefor from the said The Long Island Railroad Company, as well for principal as interest, and that he or the said George B. Fisk, one or both, may be decreed to pay to your orator all the moneys, if any received, on said debt, or any interest thereon, from the said The Long Island Railroad Company, or in case the said Thompson shall have parted with the said mortgage, concerning which your orator is ignorant, that he may be decreed to pay to your orator the value thereof in cash, at the time of the disposal thereof, or that the said Long Island Company may be decreed to account to your orator for the said principal sum of $40,000, and the interest thereon, from the said 6th day of March, 1841.

And that your orator may have such other and further relief as may seem agreeable to equity and good conscience.

May it please this Court, to grant unto your orator, a writ of subpœna, issuing out of and under the seal of this Court, directed to

the said Abraham G. Thompson, George B. Fisk, Digby V. Bell, as Auditor-General, George B. Cooper, as Treasurer, and Gideon A. Whittemore, as Secretary of State, of the State of Michigan, as aforesaid, and the said The Long Island Railroad Company, commanding them at a certain day, and under a certain penalty, to be and appear before this Court, and answer the bill in this cause, and to stand to and abide such order and decree, as may be made in the premises.

J. HOYT.

S. SANXAY, *Sol. for Applls.*
GEORGE CURTIS, *of Counsel.*

Schedule A., referred to in this Bill of Complaint.

Memorandum of an agreement entered into the 9th day of December, in the year, 1840, between "the State of Michigan," by Robert Stuart, treasurer thereof, and the "Morris Canal and Banking Company," a body corporate of the State of New Jersey.

Whereas, the State of Michigan hold a bond against the said Morris Canal and Banking Company, for the sum of one million, forty-eight thousand, five hundred and sixty-two dollars and fifty cents, dated the 13th day of March, 1839, on which there remains still unpaid for principal, the sum of seven hundred and thirty-seven thousand five hundred dollars, and for interest thereon up to this date, the sum of eighty-five thousand seven hundred and ninety-five dollars and eighty-three cents, making the whole sum due this day, on said bond from said Company to said State, the sum of eight hundred and twenty-three thousand two hundred and ninety-five dollars and eighty-three cents, which sum the said Company is unable to pay at this time, and in instalments in said bond.

Now, therefore, it is mutually agreed between the said parties, as follows:

The Morris Canal and Banking Company agree to deliver over to the State of Michigan, or the authorized agent thereof, as collateral security for the payment of the sum of eight hundred and twenty-three thousand two hundred and ninety-five dollars and eighty-three cents, with interest thereon from this date, the following property and securities, viz.:

No. 1. An assignment of a mortgage, executed by the Mount Hope Mining Company, a body corporate of the State of New Jersey, to the Morris Canal and Banking Company, on their mineral tract of about eight hundred acres, and their mineral right to about eight hundred acres adjoining, situate in the County of Morris, State of New Jersey, for fifty thousand dollars.

No. 2. A bond and mortgage executed by the Morris Canal and Banking Company, on the property purchased of Nathaniel Saxton, situated on the Morris Canal, in Morris and Warren Counties, con-

taining eleven hundred and fifty-two $\frac{76}{100}$ acres, for the sum of twenty thousand dollars.

No. 3. A bond and mortgage executed by the Morris Canal and Banking Company to the State of Michigan, on their two farms in the town of Pequanock, county of Morris, State of New Jersey, consisting of three hundred and fifteen acres, with saw-mill, two good dwelling-houses, and other improvements, for ten thousand dollars.

No. 4. An assignment of a bond and mortgage, executed by J. Serinus, T. F. Pierson, and Stiles Williams, to the Morris Canal and Banking Company, on lands situate in the County of Luzerne, and State of Pennsylvania, on the head waters of the Lehigh River, for twenty-one thousand dollars, the balance remaining due on which is ten thousand dollars or more.

No. 5. A bond and mortgage, executed by the Morris Canal and Banking Company to the State of Michigan, on their banking-house, and two lots of land, situate on the corners of Grand, Green, and Sussex Streets, Jersey City, for the sum of twenty thousand dollars.

No. 6. A deed of conveyance from George Griswold to the State of Michigan, of the banking-house and lot of ground No. 45 William Street, in the city of New York, for one hundred thousand dollars.

No. 7. A deed of conveyance, executed by the Little Schuylkill and Susquehanna Railroad Company to the State of Michigan, for a tract or tracts of land purchased by them from C. Cox, of Philadelphia, containing about one hundred acres, situate on the head waters of the Little Schuylkill River, at and near the junction of North Hampton, Luzerne, and Schuylkill Counties, in Pennsylvania, eight thousand dollars.

No. 8. An assignment of the residue of the debts, bills receivable, stocks, bonds, and all securities now held by the American Exchange Bank, and given to the said bank by the Morris Canal and Banking Company, in liquidation of a stock transaction, 1st March, 1839, after payment of said debt of the American Exchange Bank, twenty thousand dollars.

No. 9. An assignment of a judgment on the Long Island Railroad Company's railroad, cars with fixtures, &c., for forty thousand dollars.

No. 10. A bond of the Little Schuylkill and Susquehanna Railroad Company, to be hereinafter secured by mortgage on their railroad if desired, the notes of said Company for amount thereof having been delivered, in the meantime, until the bond can be procured, thirty-three thousand dollars.

No. 11. Four hundred and forty shares, of fifty dollars each, in the Cumberland Valley Railroad of Pennsylvania, twenty-two thousand dollars.

No. 12. An obligation of the Morris and Sussex Manufacturing Company of Stanhope, New Jersey, to deliver iron in New York, 1st January, 1842, to the value of forty-five thousand dollars.

No. 13. An obligation of the Morris and Sussex Manufacturing

Company, of Stanhope, New Jersey, to deliver iron in New York, 1st July, 1842, to the value of forty-five thousand dollars.

No. 14. An obligation of the Morris and Sussex Manufacturing Company, of Stanhope, New Jersey, to deliver iron in New York, 1st January, 1843, to the value of sixty thousand dollars.

No. 15. An obligation of the Morris and Sussex Manufacturing Company, of Stanhope, New Jersey, to deliver iron in New York, 1st January, 1843, to the value of twenty-seven thousand four hundred dollars.

No. 16. An obligation of Bible, Chambers & Co., of Danville, Pennsylvania, to deliver iron in New York, 1st January, 1843, to the value of twenty-seven thousand five hundred dollars.

No. 17. An assignment of a debt due from Theodore Romeyn to the said Morris Canal and Banking Company, with collateral security, estimated at eleven thousand dollars.

The parties of this agreement, mutually agree with each other, that the said properties and securities are, and shall be considered as received on the following terms, and subject to the following agreement:

First. Of the securities enumerated above, those numbered 3, 4, 5, 9, 11, amounting together to the sum of one hundred and twelve thousand dollars, shall be returned to the Morris Canal and Banking Company, upon their furnishing to the State of Michigan, in exchange, an assignment of a valid unincumbered right to their claim for advances on the script of the Apalachicola Land Company, of which George Griswold and Lewis Curtiss are the present trustees, together with said script and the requisite documents, to transfer the same to the said State, estimated at one hundred and ten thousand dollars.

Second. The said Morris Canal and Banking Company agree, that unless the substitution of the claim for advances on Apalachicola script, and the script itself, for the property and securities mentioned above, as 3d, 4th, 5th, 9th, 11th, shall be made and tendered to the State of Michigan, within six months from this date, the said latter property and securities shall remain permanently with the State of Michigan under this agreement, the Morris Canal and Banking Company shall then add thereto of other securities twenty thousand dollars.

Third. The Morris Canal and Banking Company shall pay to the State of Michigan the sum of one hundred thousand dollars on or before the first day of January, 1844, on account of the principal and interest upon the said sum of eight hundred and twenty-three thousand two hundred and ninety-five dollars and eighty-three cents, and annually thereafter on the first day of January, in each year, a like sum of the same, until the said debt and the interest thereon shall be fully paid; such payments, and all other payments made thereon, however, always to be applied in the first place, so far as

shall be necessary for that purpose, to the satisfaction of said interest which shall have accrued to the time of such payment respectively.

Fourth. Numbers 8, 12, 13, 14, 15, and 16, of the above securities and property, are to be realized as they become due, and the avails to be applied on the said debt and interest; the Morris Canal and Banking Company, however, are to have the right to negotiate the sales of the iron, subject to the approval of the authorized agent of the State of Michigan; but the contracts of sale are to be executed and carried into effect by said agent, and the proceeds received by him.

And the Morris Canal and Banking Company shall procure the assent of the Morris and Sussex Manufacturing Company, as also the assent of Bible, Chambers & Co., of Danville, Pennsylvania, to the assignment of the obligations mentioned in said numbers, 12, 13, 14, 15, and 16, to the State of Michigan, and their agreement to deliver said iron to the authorized agent of said State instead of the Morris Canal and Banking Company.

Fifth. The properties and securities, except Nos. 8, 12, 13, 14, 15, and 16, delivered to the State of Michigan under this agreement, are to be returned to the said Morris Canal and Banking Company, whenever they may require the same, upon the furnishing of other securities to the said State not inferior in value, upon a fair and just estimate of the same, and that to facilitate this exchange of the securities, which it is the intent and desire of both parties to do to the fullest extent which may be practicable for the benefit of the said Morris Canal and Banking Company, but not to the diminution of the security of the said State of Michigan, all the said property and securities delivered under this agreement, shall be placed in the safe keeping of some authorized agent of the State of Michigan, residing in the city of New York, with full power and discretion to him to make the exchange of securities in the same manner as the State itself would do, whenever application to this effect shall be made by said Morris Canal and Banking Company, and on payment being made of liquidation of the said debt and interest, a pro rata amount of securities shall be returned; this, however, only to commence when the principal and interest shall be reduced by payments within the value of the property and securities delivered to the State of Michigan under this agreement.

Sixth. The State of Michigan shall forbear any demand, suit, or process, whatsoever, against the Morris Canal and Banking Company on account of their said debt and the interest thereon, until the first day of January, 1844, already mentioned, and upon the payment of one hundred thousand dollars at the time, and annually thereafter, as hereinbefore provided, shall in like manner forbear altogether any legal proceedings against said Company, for said debt and interest thereon.

But in case of the failure of the Morris Canal and Banking Company to comply with the terms of this agreement, or to make such annual payments of one hundred thousand dollars, the State of Michigan shall have right to sell, or otherwise realize in cash, out of said property and securities, or any of them, or collect from the said Morris Canal and Banking Company an amount sufficient to provide for the payment or payments which there shall have been a failure to make, or take such other proceedings against said Company as said State may deem proper, and in case the title of any of the said property or securities, or any which may be substituted in their place under this agreement, shall prove to be defective or incumbered, then the said State of Michigan shall have a right to proceed and collect of the said Morris Canal and Banking Company the amount of the property and security, the title to which may have so proved defective or incumbered, unless the said Morris Canal and Banking Company shall, within ninety days after notice thereof, render such title perfect and unincumbered, or give other good securities in lieu thereof.

And the said Morris Canal and Banking Company agree to advance and pay to the State of Michigan on the execution of this agreement the sum of two thousand and ten dollars, which is to be applied towards the payment of the last instalment of the said debt due the said State, and which payment is made to place the said treasurer in funds to meet his expenses and those of the counsel employed by him for said State.

In witness whereof, the Morris Canal and Banking Company have hereunto affixed their corporate seal, and caused this instrument to be signed by their president and attested by their cashier, and signed also by the Treasurer of the State of Michigan on behalf of said State.

(Signed)
E. R. BIDDLE, *President.* [L. S.]
Attest: ISAAC GIBSON, *Cashier.*
ROBERT STUART,
Treasurer of State of Michigan.

In presence of
HENRY E. DAVIS.

Schedule B., referred to in this Bill of Complaint.

Know all men by these presents, that we, The Morris Canal and Banking Company, parties of the first part, in consideration of the sum of forty thousand dollars, lawful money of the United States, to them in hand paid by the State of Michigan, of the second part, at or before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do

grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, a certain indenture of mortgage, bearing date the sixth day of March, one thousand eight hundred and forty-one, made by the Long Island Railroad Company, upon certain real estate therein specified, to secure the sum of forty thousand dollars, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest, to have and to hold the same unto the said party of the second part, its successors and assigns forever, subject only to the proviso in the said indenture of mortgage mentioned. And we do hereby make, constitute, and appoint the said party of the second part our true and lawful attorney, irrevocable, in our name or otherwise, but at its proper costs and charges, to have, use, and take, all lawful ways and means for the recovery of all the said money and interest, and in case of payment to discharge the same as fully as we might or could do if these presents were not made.

In witness whereof, the said parties of the first part, in pursuance of a resolution of the Board of Directors of said Company, have caused their corporate seal to be hereunto affixed, and the same to be signed by their president and attested by their cashier, this twenty-sixth day of April, in the year one thousand eight hundred and forty-one.

The Morris Canal and Banking Company by
E. R. BIDDLE, *President.*
Attest: ISAAC GIBSON, *Cashier.*

Sealed and delivered
in presence of [L. S.]
WALTER BETTS, JR.

Schedule C., referred to in the within Bill.

Know all men by these presents, that the State of Michigan, party hereto of the first part, in consideration of the sum of $20,000, lawful money of the United States, to the said State of Michigan in hand paid by Abraham G. Thompson, of the city and State of New York, of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, a certain indenture of mortgage, bearing date the sixth day of March, one thousand eight hundred and forty-one, made by the Long Island Railroad Company as the party thereto of the first part, to the Morris Canal and Banking Company, upon the real estate of the said The Long Island Railroad Company, to secure the principal sum of $40,000, and recorded in the office of the Clerk of Kings County, in lib. 68 of mor. p. 417, 28th April, 1841; in the office of the Clerk of the County of Queens,

in lib. M M of mortgages, at page 205, on the 10th of May, 1841; and in the office of the Clerk of the County of Suffolk, in lib. 27 of mort., at p. 143, on the 11th of June, 1841; together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest; which bond and mortgage were assigned by the said The Morris Canal and Banking Company to the said State of Michigan, by an instrument of assignment bearing date the 26th day of April, in the year 1841, and recorded in each of the three clerks' offices hereinbefore stated, to have and to hold the same unto the said party of the second part, his executors, administrators, and assigns, forever, subject only to the proviso in the said indenture of mortgage mentioned; and the said State of Michigan do hereby constitute and appoint the said party of the second part their true and lawful attorney, irrevocable, in their name or otherwise, but at his proper cost and charges, to have, use, and take, all lawful ways and means for the recovery of the said money and interest, and in case of payment to discharge the same as fully as they might or could do if these presents were not made; and the said State of Michigan do hereby covenant, promise, and agree, to and with the said party of the second part, that all the principal sum secured by the said bond and mortgage is still due and unpaid.

In witness whereof, the said State of Michigan has to these presents caused the great seal of state to be affixed, and these presents to be signed by Charles G. Hammond, Auditor-General, John J. Adam, Treasurer, and Robert P. Eldridge, Secretary of the said State, the 30th day of May, in the year 1843.

(Signed) CHARLES G. HAMMOND,
Auditor-General.
JOHN J. ADAM,
State Treasurer.
R. P. ELDRIDGE,
Sec. of State of the State of Michigan.

Sealed and delivered in presence of [L. S.]
C. C. JACKSON,
T. F. BRODHEAD.

STATE OF MICHIGAN,
Wayne County, ss.

On this 30th day of May, in the year of our Lord 1843, before me, the subscriber, a commissioner in and for the said State, appointed by the Governor of the State of New York to take the acknowledgment and proof of deeds and other writings under seal to be used or recorded in the said State of New York, and to administer oaths and affirmations, appeared Charles G. Hammond, Auditor-General, John J. Adam, State Treasurer, and Robert P. Eldridge,

Secretary of State of the said State of Michigan, all of whom are personally known to me to be such officers as hereinbefore described, who, being by me sworn, did depose and say, that they reside in the said State of Michigan, at Detroit, the seat of government thereof, and that the seal affixed to the foregoing instrument is the great seal of the said State of Michigan; that the seal was affixed thereto by authority of the said State; that the deponents had severally subscribed their names to the foregoing instrument as such officers aforesaid; and that they severally acknowledged the said instrument to be the act and deed of the State of Michigan; all of which is to me satisfactory evidence of the due execution of said instrument by the State of Michigan.

Given under my hand and seal.

C. C. JACKSON, [L. S.]

A Commissioner for the State of Michigan, appointed by the Governor of New York, to take acknowledgments and administer oaths and affirmations.

By the Legislature of the State of New Jersey.

An Act to Incorporate a Company to form an Artificial Navigation between the Passaic and Delaware Rivers.

Passed 31st December, 1824.

Whereas, the construction of a canal to unite the River Delaware near Easton with the tide waters of the Passaic, will be of great public benefit and advantage to the people of New Jersey; now, therefore, in order to secure to the State the results of this public work, and also as an inducement to a company to engage in this important undertaking, and in consideration of the risks and expenditure which they may encounter in its execution and operations; Therefore,

I. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That Jacob S. Thompson, of Sussex, Silas Cook, of Morris, John Dow, of Essex, Charles Board, of Bergen, and all and every other person or persons, who may become subscribers, according to the mode hereinafter prescribed, their successors and assigns, shall be, and are hereby incorporated by the name of the "Morris Canal and Banking Company," for the purposes and with the privileges and immunities hereinafter described, defined, and granted; and by that name shall be a body corporate and politic in law, and shall and may sue and be sued, implead and be impleaded in courts of justice, or in any other place whatsoever; and the said Company shall have power and authority, at any time after the passage of this act, to purchase, receive in donation, possess, enjoy, and retain, demise, grant, alien, and sell, all such lands, tenements, hereditaments, water streams, and water pri-

vileges, rights, goods, chattels, and effects of every description whatsoever, as may be necessary for carrying into effect any of the provisions of this act, and under the restrictions and limitations therein mentioned; and that the said Company shall have perpetual succession, and power to make and use a common seal, and the same to renew and change at pleasure; and also to adopt, establish, and carry into execution, such by-laws, ordinances, and regulations, as shall by its president and directors be judged necessary or convenient for the said corporation, in respect to its canal and banking operations hereinafter mentioned, and the same to change, alter, repeal, annul, and re-enact; Provided, the same be not contrary to the Constitution or laws of the United States or the State of New Jersey.

II. And be it enacted, That George P. McCulloch and John Scott, of the county of Morris, Israel Crane, of the county of Essex, and Joseph G. Swift, Henry Eckford, and David D. Ogden, of the city of New York, be, and they are hereby appointed commissioners for receiving subscriptions for the sum of one million of dollars, to constitute the capital stock for the canal aforesaid, in shares of one hundred dollars each; and that the said commissioners, or a majority of them, shall and do open books for that purpose, at such time and in such place or places within this State as they shall designate, by public advertisements, to be previously inserted for at least three weeks in a public newspaper, printed in Morristown, Newark, and the city of New York, respectively; and shall continue the same open until the said capital stock shall be subscribed, or at their discretion close the same, after they shall have remained open two days, and again open the same at some other time or times, place or places, giving public notice thereof as aforesaid. And the sum of ten per cent. upon each share so subscribed shall be paid in specie, or in the bills of banks which redeem their bills with specie, by each subscriber, at the time of subscription, to the said commissioners, or a majority of them; and the amount so received at the time of subscription, shall, by the said commissioners, or a majority of them, be deposited in such bank or banks as the said commissioners, or a majority of them, may elect in their joint names, there to remain until the same shall be by them paid over to the directors of the said Company, to be appointed as hereinafter directed; and the said directors, when so appointed, shall have power, and they are hereby authorized, to call upon the said subscribers for the payment of further instalments, in such sum or sums, at such time or times, and under such forfeiture or forfeitures, as they may deem expedient, until the whole amount of the said shares so subscribed shall have been fully paid.

III. And be it enacted, that the management of the concern of the said Company shall be, and the same is hereby vested in fifteen directors, to be selected from the stockholders; and that the said directors shall choose, by plurality of votes, a president from among themselves; and as soon as conveniently may be, after the said stock

of one million of dollars shall have been subscribed, the before-named commissioners, or a majority of them, shall convene the said stockholders, by public notice to be given as aforesaid, and at such time and place as they shall designate in said notice, to choose the first board of directors, who shall hold their offices until the first Monday of April, eighteen hundred and twenty-six. And if, for any cause whatsoever, an election for directors should not be made on the day whereon, in pursuance of this act it ought to be made, the said corporation shall not for that cause be deemed dissolved, but it may be lawful, at any other time, to hold such election, public notice of the time and place being previously given as aforesaid; and until such election be made, the president and directors for the time being, shall continue in office: Provided, such election be held before the first day of January next ensuing the said day of election. And in case of the death, resignation, incapacity, or removal of the president, or of one or more of the directors, the vacancy thereby occasioned may be supplied by appointments to be made by the board of directors, and at all elections of directors, each stockholder shall be entitled to one vote for every share of stock by him or her held.

IV. And be it enacted, That no State, county, township, or other public assessments, taxes, or charges whatsoever, shall at any time be laid or imposed upon the said Canal Company, or upon the stocks and estates which may become vested in them under this act; but this exemption shall not extend to any other estate or property of the Company than such as is possessed, occupied, and used by the said Company for the actual and necessary purposes of said canal navigation under this act, according to the true intent and meaning thereof; and no tax shall be imposed upon any property of said Company, or of other persons, transported, or used upon or about said canal, of greater amount, according to the value of the article taxed, than shall at the same time be imposed upon the property of the same or similar kinds in the State of New Jersey.

V. And be it enacted, That it shall be lawful for the said Company to construct, make, and execute a canal, or artificial navigation, to connect the waters of the Delaware River, near Easton, with the tide-waters of the Passaic River, and passing through the county of Morris, with all the locks, works, devices, wharves, toll-houses, and offices necessary for the use of said canal. And it shall and may be lawful for the said Company, by its president and directors, and by any agent, engineer, superintendent, or contractor, or any other person or persons employed in the service of said Company, to enter from time to time, and at all times, and upon all lands, whether covered with water or not, for the purpose of exploring or surveying the route or routes for said canal, and locating the several works as above specified, doing thereunto no unnecessary damage. And when the said route or routes shall have been fixed upon, and its several works located by the president and directors, or a majority of them,

and a survey thereof deposited in the office of the Secretary of State, then it may be lawful for them, and for any agent, superintendent, engineer, contractor, or any person or persons employed in the service of said corporation, at any time to enter upon, take possession of, and use, all and singular such lands, water, and streams, subject to such compensation to be made therefor, as is hereafter directed.

VI. And be it enacted, that where lands, waters, and streams, that may be useful for said canal, shall not be made a free gift by their owner or owners to the said Company, then the Company shall pay to the owner or owners such compensation as shall be mutually agreed upon. And in case of disagreement in relation to the value of such lands, waters, and streams, or in case the owner or owners thereof be feme covert, under age, non compos mentis, or reside out of the State, then it shall be lawful to and for the aforesaid president and directors, from time to time, and at all times, to cause a survey or surveys, and a map or maps, to be made of any of the lands, waters, and streams, in their estimation requisite, and not given as aforesaid, and which they are authorized by this act to take for the uses aforesaid: in the field book of which map and survey, or maps and surveys, shall be distinguished the land or waters of each of the several owners and occupants appropriated, or intended to be appropriated, as aforesaid, and the quantity thereof, and shall exhibit the same to one of the justices of the Supreme Court, in this State, not being a stockholder (having given at least ten days' previous notice in writing to the parties concerned, if resident in the State, and by publication in at least two gazettes, published in the counties to be traversed by the canal, of the time and place of such exhibition), such book and map being accompanied by the oath or affirmation of one of the engineers employed by said Company; that the premises therein described are required to be occupied by the Company for the purpose of carrying into effect the object set forth by this act, and are not more than is requisite for the said uses; and thereupon it shall be the duty of said justice to certify such map and book under his hand and seal, and to cause the same to be filed in the office of the clerk of the county where such water or stream may be situated, there to remain a public record. And it shall also be the duty of said justice, at the time and place aforesaid, by a writing under his hand and seal, to appoint three discreet and disinterested freeholders, chosen from some county or counties not interested by the canal, as appraisers, who shall, before they enter upon the duties of their appointments, severally take and subscribe an oath or affirmation, before some person authorized to administer oaths, faithfully and impartially to perform the duties required of them by this act, and shall receive such compensation, to be paid by said Company, as the justice by whom they are appointed shall determine. And it shall be the duty of said appraisers or a majority of them, if requested so to do by the owner or owners, or by the Company, to make a just and equita-

ble estimate and appraisal of the value of the lands and damages to the several owners, proprietors, or parties interested in the premises so required for the purposes aforesaid. The said appraisers, having given ten days' previous notice of the time and place of meeting, to make such appraisements to the owner or owners resident in this State. And the appraisers, or a majority of them, shall make regular entries of their determination and appraisal, in a book or books, to be by them kept for that purpose, and shall certify the same under their hands and seals, acknowledging the same before some person authorized to take the acknowledgment of deeds, and shall cause such book or books to be filed in the office of the clerk of the county in which the lands may be situated, there to remain a public record. And the Company shall pay or tender the damages so assessed to the person or persons entitled thereto; or in case such owner or owners shall be feme covert, under age, non compos mentis, or reside out of the State of New Jersey, the said Company shall pay the same into the Court of Chancery of this State, to be disposed of under the order of the Chancellor, according to the laws of this State; and immediately thereupon, the estate, right, property, and interest, in and to the premises so appropriated, described, and appraised, shall be vested in the Company, to be by them held so long as they shall be used for the purpose of said canal.

VII. And be it enacted, That it shall be lawful for the president and directors of said Company, and their superintendents, engineers, workmen, and laborers, with carts, wagons, and other carriages, and with their beasts of draught and burden, and all necessary materials, tools, and implements, to enter upon all lands contiguous or near to the route or tract of the canal, doing as little damage thereto as possible, and repairing any breaches they may make in the enclosures thereof, and to take and carry away any stone, gravel, clay, sand, or earth, there being most conveniently situated, and being most suitable for making or repairing said canal, the locks, and other devices before mentioned thereto belonging; the said owners or occupants being entitled to a fair compensation or remuneration for the materials taken or damages done, if claimed within twelve months from the time of such damage sustained or materials taken away. And in case of disagreement as to the amount of such damage, then it shall be lawful for the clerk of the Common Pleas of the county, upon the application of the Company, to appoint three judicious disinterested freeholders as appraisers, who, having given at least fifteen days' notice to the owners, occupants, or persons having charge of such lands, and having been previously sworn fairly and impartially to inquire into, and report the amount of the said damages, shall deliver to each party, or deposit in the clerk's office of the county for their use, a copy of their appraisal under their hands and seals, which appraisal shall be conclusive evidence of the amount of damages in any suit to be brought therefor, deducting therefrom, on such

suit, all cost and charges of the appraisement, if the amount so appraised shall not exceed one dollar, nor be less than what the Company offered to pay before the appointment of appraisers.

VIII. And be it enacted, That the president and directors, or a majority of them, shall have power to elect all engineers, treasurers, collectors, cashiers, tollmen, clerks, agents, artificers, workmen, laborers, servants, and officers whatsoever, necessary in their judgment for conducting the affairs of the Company, and to dismiss and elect others at their pleasure; and also shall have power to charge and collect tolls and rates for the passage of all boats, goods, draught cattle, wares, passengers, produce, and merchandise whatsoever, upon the canal, or upon its banks, and to make, enact, and at pleasure, change and re-enact, such tolls and rates, and also regulations and rules for the collection and levying of the same, as to them may seem proper: Provided, the Company shall, at no time, charge more than three cents per ton per mile on the passage of coal, lime, gypsum, iron, iron ore, and stone, and a proportionable charge upon other articles, contemplating their bulk, weight, and value, and a card thereof to be put up in a conspicuous place at every lock, or other point on said canal, where toll shall be required to be paid. And if, at any time hereafter, the said president and directors shall deem it expedient to increase their capital stock for the canal aforesaid, it shall be lawful for them so to do, and to obtain subscriptions for the same, and to manage and to direct the same agreeably to the provisions, true intent and meaning of this act; and all stockholders of such additional shares, and their assigns, shall be thenceforward incorporated into the same Company. Provided always, that a preference of subscription shall always be given to actual stockholders, in proportion to the shares they shall respectively hold, and that such additional stock shall not exceed five hundred thousand dollars.

IX. And be it enacted, That at the general meetings of the stockholders, to be held annually, agreeably to the second section of this act, a general statement of the affairs of the Company shall be made out, and exhibited by the president and directors; and the president and directors, or a majority of them, shall, at that meeting, or as often as to them may appear expedient, declare such dividends of the net profits of the Company as they may think proper.

X. And be it enacted, That the capital stock of said Company shall be deemed personal property; and that all shares of the capital stock at any time owned by any stockholder, shall be transferable on the books of the Company in such manner as the by-laws shall ordain; but all debts due or payable to the Company, and also all outstanding engagements with it, shall be satisfied previously out of said stock, before such transfer can be made, and before any dividend or dividends shall be paid upon such shares, unless by the consent of the president and directors.

XI. And be it enacted, That under the powers and conditions

stipulated in the foregoing enactments, it shall be lawful for the Company to alter, at any time, any part or parts of the route of the canal, making compensation for damages to owners as hereinbefore directed; and that it shall not be lawful for any person or persons, or any body politic or corporate whatsoever, to construct any canal within ten miles of any point of the main trunk of the Morris Canal, without the consent of the said Company, expressed in writing, under their common seal; but this prohibition shall not extend to the construction of any canal of less than ten miles in length, and which does not approach within two miles of the canal to be constructed under this charter, and saving to any person or persons, or body corporate, any of their just and legal rights already vested, to the contrary of such prohibition. And it shall be the duty of the Chancellor of this State, upon application made therefor by the solicitor of the Company, in due form, to issue his injunction to stay and prevent the construction of any such canal; and also, it shall be lawful for the said Company to raise the waters in the Green Pond, and Lake Hopatcong, commonly called the Great Pond, by damming the same, and to use the surplus water thus saved, and so much water of said ponds as shall be necessary for said canal, to take and convey said waters into said canal, all loss and damages to the owners of said pond, and the lands flowed or otherwise used in obtaining water for the same as aforesaid, being paid for agreeably to the previous provisions of this act.

XII. And be it enacted, That when the said canal cross any public road or farm, it shall be the duty of the Company, at their proper expense, to make good and sufficient bridges across said canal, and to keep the same in repair, so as to prevent any inconvenience in the usage of the said road or farm, by reason of the said canal crossing the same.

XIII. And be it enacted, That if any person or persons, shall in any manner, wilfully or maliciously destroy, injure, or obstruct said canal, or any of its parts, or works therewith connected, or unnecessarily or maliciously open any gates thereon, or otherwise let off and waste water to the detriment of said Company, he, she, or they, shall be considered guilty of a misdemeanor, and being thereof convicted, shall be punished by fine or imprisonment, or both, at the discretion of the court in which such conviction shall take place; Provided such fine shall not exceed the sum of twenty-five dollars, nor the imprisonment, the term of two years; and such criminal prosecution shall in no wise impair the right of action for damages by a civil suit to be brought by the Company.

XIV. And be it enacted, That for the encouragement of so great an undertaking as the erection of said canal, and in some measure to induce capitalists and others to subscribe to the same, it shall be lawful for the said Company to increase the capital stock of said Company, for the purpose of banking operations, but under the following

conditions, limitations and restrictions, namely: that as soon as the said Company shall have actually paid, laid out and expended the sum of two hundred thousand dollars, in the purchase of lands, waters, and water privileges, necessary for the construction and uses of said canal, and in constructing, making and building the same, it shall and may be lawful for the president and directors aforesaid to call from the stockholders respectively of said Canal Company, for the time being, in proportion to their respective shares, the sum of two hundred thousand dollars, or any less sum, in the discretion of said president and directors, towards a capital, for banking purposes as aforesaid; and so often thereafter as the said Company shall have paid, laid out, and expended, other like sums of two hundred thousand dollars in the purchase of lands, as aforesaid, and in constructing, making and building the said canal as aforesaid, it shall be lawful for the president and directors aforesaid, to increase the capital stock of said Company, for banking purposes, to such further amount of two hundred thousand dollars: Provided that the said increased capital of the Company for banking purposes, shall not exceed in the whole, one million of dollars; and the president and directors shall and may, upon any increase of the capital of said Company, for banking purposes as aforesaid, call for the same from the stockholders respectively, at such time, and in such instalments in proportion to their respective shares, and upon such notice, and under such forfeitures, as they shall prescribe: Provided always, that no such increase of stock for banking purposes as aforesaid, shall at any time be made, by reason of an alleged expenditure of any of the respective sums of two hundred thousand dollars, as aforesaid, until the president and directors aforesaid shall have first caused to be exhibited to the Governor or person administering the government of this State, a just and full statement and account, showing that such expenditure of two hundred thousand dollars hath actually been made in and about the purchases necessary for the construction of, and in the various works as aforesaid of said canal; and the president and cashier, or person keeping the accounts of said Company, shall severally certify the said account of expenditures to be just and true, and subscribe their names thereto, and, moreover, make, subscribe, and annex to the same their respective oath or affirmation, taken before one of the Justices of the Supreme Court of this State, that the said account is just and true to the best of their knowledge and belief; and shall otherwise, if required by the said Governor, or person administering the government, prove to the satisfaction that the same is true, and further obtain from said Governor, or person administering the government, a certificate under his hand and the seal of the State, certifying that it hath appeared to him that the said sum of two hundred thousand dollars has been actually expended upon and towards the said canal, according to the provisions of this act, and that the said Company is entitled to increase its capital stock

for banking purposes to that amount; which certificate the said Governor, or person administering the government, upon his being satisfied of the truth and fairness of said account, is hereby authorized and required to grant. And the said president and directors, before any increase of the said capital for banking purposes, to such additional amount of two hundred thousand dollars as aforesaid, shall cause the account and statement exhibited and sworn to as aforesaid, to be filed in the office of the Secretary of State, and the certificate of the Governor, or person administering the government as aforesaid, to be recorded in the same office; a certified copy of which certificate and account, by the Secretary of State, under the great seal of the State, shall be received in all courts in this State, as evidence that such expenditures of two hundred thousand dollars was made on or towards said canal, at the exhibition of the account aforesaid.

XV. And be it enacted, That if the person acting as president and cashier, or accountant, or either of them, shall wilfully make a false oath to any such account as is mentioned in the foregoing section, such person shall be deemed guilty of perjury, and on conviction of the same, be subject to the pains and penalties of wilful and corrupt perjury.

XVI. And be it enacted, That within one year after the first increase of the capital stock of the said Company for banking purposes as aforesaid shall have been made, and so annually thereafter, until the said canal shall have been completed, the said Company shall cause to be made out a just and true account of their expenditures upon said canal within each of the said years respectively, which account shall be certified and sworn to by the acting president and cashier, or accountant, in manner as directed in the fourteenth section of this act; and the said account shall be filed within such year in the secretary's office of this State. And whensoever it shall appear by such annual account in any year, that the said Company have not actually expended on said canal at least the sum of one hundred thousand dollars within such year, or if the said Company shall neglect to file said account in manner aforesaid in any year, then and in either case the said Company shall wholly cease from and discontinue all banking discounts and operations upon their said increased capital for banking purposes, and shall not resume the same until the said account shall have been proved and filed as aforesaid, and showing such annual expenditure.

XVII. And be it enacted, That if the said acting president and cashier, or accountant, or either of them, shall wilfully make a false oath to any such account as is mentioned in the foregoing section, such person shall be deemed guilty of perjury, and on conviction of the same, be subject to the pains and penalties of wilful and corrupt perjury.

XVIII. And be it enacted, That the banking house of the said

Company shall be situated, and their banking operations be conducted, in the city of Jersey, in the county of Bergen; and it shall be the duty of the president and cashier of the said corporation, for the time being, once in two years to make a full return to the Secretary of State, under oath, of the stock of said Company used in banking operations, where the same is employed, how much specie is in the vault or vaults of their banking house or banking houses, what amount of notes of said Company are in circulation, and the amount of debts due from and owing to said Company; and in case the said president and cashier shall neglect or refuse so to do for the space of ninety days, the Legislature may, at any time thereafter, in their discretion, suspend banking operations.

XIX. And be it enacted, That the funds of the said Company shall never be employed in any other operations, nor for any other purposes, than those provided for in this act.

XX. And be it enacted, That nothing in this act shall be taken to impair the right of any person to an action against the said Company for damages to his or her water-rights, lands, tenements, or hereditaments, by the erection of said canal, where such person had not been agreed with by the said Company, or his or her damages, right and estate satisfied, and vested in the said Company, under the previous provisions of this act.

XXI. And be it enacted, That in eleven years after the passing of this act, and annually thereafter, the president and directors of said Company shall be, and they are hereby required to pay, or cause to be paid, into the treasury of this State, the one-half of one per cent. on the whole amount of such capital actually subscribed and in, and which shall thereafter be paid into such Company for banking purposes as aforesaid; and upon neglect or refusal so to do by said president and directors, the said tax shall and may be recovered in such manner as is directed in an act, entitled "An Act to Tax Bank Stock," passed November second, one thousand eight hundred and ten, or any other act or acts of the Legislature for the time being, for the recovery of tax on bank stock; and the said tax, when collected, shall be appropriated as other bank tax is, or shall by law be directed to be appropriated.

XXII. And be it enacted, That so much of this act as relates to banking rights and privileges upon the increased capital of the Company for banking purposes as aforesaid, shall continue and be in force for and during the term of thirty-one years from the passage of this act.

XXIII. And be it enacted, That unless one million of dollars shall be subscribed as aforesaid, on or before the first day of November next, and also, unless the said canal shall be completed and opened for the passage of boats within fifteen years from the passage of this act, then the same shall be, and is hereby declared to be, null and void.

XXIV. And be it enacted, That the said Company shall and may be, and are hereby made capable of using any part of their capital which shall be paid in for banking purposes as aforesaid, for the following additional purposes, that is to say, in buying and selling bills of exchange, or the stock of any body or bodies corporate and politic, and in loans upon bonds and mortgages; and they may bind themselves by contract not under seal, and receive and take by deed or devise any effects and property, both real and personal, which may be left or conveyed to said Company in trust, and to assume, perform, and execute any trust which has been or may be created by any deed, bequest, or devise, as aforesaid. And the said Company is hereby authorized and empowered to receive, take, possess, and stand seised of, and to execute any and all such trust or trusts in their corporate capacity and name, in the same manner and to the same extent as any private trustee or trustees might or could lawfully do, and no further; but it is hereby expressly declared, that the privileges hereby granted to the said Company for receiving and executing trusts are solely for the purpose of the protection of property so conveyed to them, and not for the purpose of aiding or promoting any traffic in any kind of stocks, or in any kind of goods, wares, and merchandise; and in case any kind of goods, wares, or merchandise, shall be so conveyed or bequeathed in trust as aforesaid, the said Company shall dispose of the same as soon as it conveniently can be done, and the avails thereof shall be invested in stocks, or in bonds and mortgages, or other permanent securities, for the sole use of the person or persons beneficially interested therein; and the said privileges shall not be so construed as legally to empower the said Company to take any other kind of trusts than such as are usual with other trustees: Provided always, that this act shall not extend to create any entailment, trust, or perpetuity, contrary to any existing provision or law.

XXV. And be it enacted, That the said canal, when completed, shall forever thereafter be esteemed a public highway, free for the transportation of any goods, commodities, or produce whatsoever, on payment of the tolls, and conforming to the regulations made or authorized by this act. And it shall be lawful for the Legislature of this State, at any time hereafter, to appoint three commissioners for the purpose of fixing and regulating the tolls to be taken on said canal, which shall be done by the said commissioners in conjunction with two commissioners to be appointed by the Company, unless the said Company should refuse or neglect, upon due notice, to appoint any commissioners on their part; in which case the said commissioners on the part of the State, or a majority of them, shall fix and regulate the tolls, with due regard to the interest of the Company and of the citizens of this State: Provided always, that they shall not have power to reduce said tolls lower than one-half of the greatest amount

allowed by the ninth section of this act, without the consent of the president and directors of said Company.

XXVI. And be it enacted, That at the end of ninety-nine years from the passing of this act, it shall and may be lawful for this State to take to itself, and on its own account, the said canal and its appurtenances, paying to the said Company the fair value thereof, to be estimated and fixed upon by ten commissioners, or a majority of them, to be mutually chosen by this State and the said Company; or, in case that it shall not be done at that time, or within one year thereafter, this charter shall continue, so far as it respects its canal operations and privileges, for the further term of fifty years, when it shall cease; and the said canal, with its appurtenances, become the sole property of this State.

XXVII. And be it enacted, That the first, fifth, sixth, and eleventh sections, and every other part of this act, shall be so construed, as that the said corporation shall not be authorized to take or appropriate to the use of said canal, or under color or pretence that the same are necessary therefor, any lands, waters, or streams of water, but such only as are actually necessary for the erection and use of said canal, for the purposes of navigation only, and its necessary towing paths and works, as specified in the fifth section of this act; and that the said corporation shall not be authorized to demise, grant, alien, or sell any such lands, waters, or streams taken, or pretended to be taken, or required for the use of said canal as aforesaid, or any part thereof, to any person or persons whomsoever (excepting only such lands as may be received by them by donation, or acquired of them by private contract); and that the said corporation or any other person, shall not be authorized to use or appropriate any part of said waters for mills, or any other purpose than the mere navigation of said canal; and all waters not used for that purpose, shall be permitted, without unnecessary interruption, to flow into their ancient and natural courses and channels; and that the 20th Section of this act shall be so construed, as to extend to damages sustained, not only by the erection of the said canal in the first instance, but also by the subsequent operations of the Company, from time to time, as the same may arise; anything in this act before contained to the contrary notwithstanding.

XXVIII. And be it enacted, That this shall be a public act, and shall be judicially referred to by all judges, justices, and others, without being specially pleaded.

A Supplement to the Act entitled "An Act to incorporate a Company to form an Artificial Navigation between the Passaic and Delaware Rivers.

Passed 31st December, 1824.

SEC. 1. Be it enacted, by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same,

That any time after one million of dollars shall be subscribed towards the capital stock of said Company, and ten per cent. thereon paid to the commissioners and directors appointed, as mentioned in said act, it shall be lawful for the said Company to call in from the stockholders respectively, the sum of one hundred thousand dollars, to be used for banking purposes, as directed in said act; but they shall not call in any more money for said purposes, except in conformity to the provisions of said act. And if the said Company shall omit, for the space of one year after the passing of this supplement, to expend the sum of one hundred thousand dollars on said canal, and file an account thereof, agreeably to the sixteenth section of said act, the banking privileges hereby given shall cease.

An Act to authorize the Morris Canal and Banking Company to extend the Morris Canal to the Waters of the Hudson.

Passed January 26th, 1828.

SEC. 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the Morris Canal and Banking Company, incorporated by an act, entitled "An Act to incorporate a Company to form an Artificial Navigation between the Passaic and Delaware Rivers," passed December 31, 1824, to continue the Morris Canal to the waters of the Hudson, at or near the city of New Jersey; and, for that purpose, said Company shall have all the rights, powers, and privileges given and granted by the said act, and shall be subject to all the restrictions, limitations, conditions, and provisions in the said act contained, in the same manner, and to same effect, as if the said Company had been originally authorized by said act, to construct a canal or artificial navigation to connect the waters of the Delaware River near Easton, with the waters of the Hudson, at or near the city of Jersey: Provided, that the canal shall be connected with the Passaic River at the village of Newark, so that the boats used on said canal, can, at all proper times, pass from the same into the river, and from the said river into the canal: Provided also, that nothing herein, or in the act of incorporation hereinbefore mentioned, contained, shall be taken or construed to hinder or prevent the legislature from authorizing a deep cut or canal, for sloop navigation between Newark and New York bays: And Provided further, that the said Company, unless it be with the consent of the owner or owners, shall not take any lands for extending the said Morris Canal, pursuant to the provisions of this act, until the said lands shall have been surveyed and appraised, pursuant to the sixth section of the said act of incorporation, and until the said Company shall have first paid, or tendered to the person entitled thereto, the amount of such appraisement; or in case such person

shall be feme covert, under age, non compos mentis, or out of the State, the said Company shall pay the same into the Court of Chancery of this State; and in all other respects, the provision of the said act of incorporation, shall be taken as applicable to lands to be taken for the purpose of extending the said canal, pursuant to the provision of this act, in the same manner as they apply to lands which may be taken pursuant to the said original act of incorporation.

SEC. 2. And be it enacted, That it shall and may be lawful for the said Company to make and construct the said canal through, upon, or along any street, road, or public highway; but if the said canal shall be made or constructed through, upon, or along any street or streets, in the town of Newark and Jersey City, or either of them, in such case, the land occupied by said canal, and for its towing path, shall not exceed a space of thirty-two feet.

SEC. 3. And be it enacted, That it shall be the duty of the said Company, at their proper expense, to make good and sufficient bridges, and to keep the same in repair, across any part of the said canal which may be extended, pursuant to this act, so that it shall be convenient to the inhabitants, at all times, to pass to and from their lands and meadows, and to the waters and landing-places of the said bays and rivers.

An Act to authorize the Morris Canal and Banking Company to borrow money, and for other purposes.

Passed February 23, 1829.

SEC. 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the said The Morris Canal and Banking Company to borrow the sum of five hundred thousand dollars, and to issue therefor their post notes, bearing an interest of six per cent. per annum, payable to the owners or bona fide holders thereof: Provided, that no such post note shall be issued of a less denomination than three hundred dollars.

SEC. 2. And be it enacted, That for the purpose of securing the punctual payment of the interest, and the redemption and payment of the principal sums so to be borrowed as aforesaid, the Morris Canal and Banking Company be, and they are hereby authorized to execute and deliver to any person or persons, body corporate or politic, an assignment, conveyance, or transfer of the said Morris Canal, with its appendages and appurtenances, and of all the lands, tenements, and premises belonging to the said Company, and of the charter, chartered rights and privileges of the same, and conditioned for the purpose aforesaid; which assignment, conveyance, or transfer shall be entered on record in the office of the Secretary of this State,

and shall be valid and effectual as a collateral security for the payment of the principal and interest of the said post notes, according to the tenor and effect thereof.

SEC. 3. And be it enacted, That if the said Company shall neglect or refuse to pay to any person or persons, being the owners or bona fide holders or assignees of any post note or post notes, so to be issued by the said Company for the said loan of five hundred thousand dollars, the interest due thereon, as the same may become due, or the principal amount of such post note or post notes, when the principal thereof shall become due, at the banking house and other office of the said Company in this State, the same having been presented for payment, then, and in either of the cases aforesaid, upon such failure and defalcation being proved, or otherwise made to appear to the satisfaction of the Chancellor of this State, the said Morris Canal, with all its appendages and appurtenances, and all its chartered rights and privileges, shall become the property of the said assignees or transferees, for the use and benefit of the bona fide owners of the post notes that may have been issued by the said Company, under the provisions of this act; and thereafter the said assignees or transferees shall hold, use, and enjoy the said canal with its appendages and appurtenances, and take and receive the tolls, rents, issues, and profits thereof, in trust for the owners as aforesaid, and of the said post notes in proportion to their respective interest therein, during the whole of the residue of the term for which the said Company was chartered, in as full and ample a manner as the stockholders of the said Company could or might have used and enjoyed the same, subject, nevertheless, to all the restrictions, limitations, and conditions contained in the said charter.

SEC. 4. And be it enacted, That if the said Morris Canal and Banking Company shall pay to the owners or bona fide holders of the post notes so to be issued by them for the said loan, the interest to become due thereon in manner aforesaid, and the principal sums due thereon, when the same shall become payable, according to the tenor and effect of such post notes, then, and from thenceforth, the said Morris Canal and Banking Company shall stand seised and possessed of said canal, with all its appendages and appurtenances, and of and with all the rights, immunities, and privileges contained in and guaranteed to them by their original charter, in as full and ample a manner as if this act had not been passed, and the grant, conveyance, or assignment of the said canal, with the lands, appendages, and appurtenances hereinbefore provided for, shall cease and be utterly null and void, and as if the same had never been made.

An Act to amend an Act entitled "An Act to incorporate a Company to form an Artificial Navigation between the Passaic and Delaware Rivers," passed 31st of December, one thousand eight hundred and twenty-four, and for other purposes.

Passed January 28, 1830.

Whereas the Morris Canal and Banking Company have petitioned for certain amendments, modifications, and alterations of the acts incorporating and affecting said Company.

SEC. 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That where any freeholder who may have been, or hereafter may be, appointed as an appraiser, pursuant to the sixth section of the act entitled "An Act to incorporate a Company to form an Artificial Navigation between the Passaic and Delaware Rivers," shall die, remove from the State, refuse to act, or his place or office otherwise become vacant, it shall be lawful for any Justice of the Supreme Court in this State, not being a stockholder, to appoint, in the manner prescribed by said last-mentioned act, some other discreet or disinterested freeholder as appraiser, to fill such vacancy, and so as often as such vacancy shall happen as aforesaid; and the Justice of the Supreme Court, to whom application shall be made in this behalf, shall decide upon such testimony as may be presented to him, before he makes any new appointment as aforesaid, that such vacancy has happened within the true intent and meaning of this act; and when such appointment shall proceed according to the provisions of the last-mentioned act, and shall in all things conform thereto, in the same manner as if the freeholders, then being appraisers, had been the persons originally appointed as appraisers, pursuant to the said act incorporating the said Company.

SEC. 2. And be it enacted, That the Morris Canal and Banking Company may, from time to time, borrow all such sum and sums of money as to the Board of Directors of the said Company shall appear necessary and proper, and for securing the due payment of the sums so borrowed, with the interest thereof, it shall and may be lawful for the said Company to pledge or hypothecate, by way of mortgage, trust, or otherwise howsoever, the Morris Canal, with all its privileges, appendages, and appurtenances, and all the property and chartered rights of the said Company; and such pledge, hypothecation, mortgage, or trust, may be valid for the due payment of any sum or sums of money, with the interest thereof, which the same may be given to secure; and in case default shall be made in the payment of any sum or sums of money, so borrowed as aforesaid, or the interest thereof, the person or persons, body politic or corporate, or their legal representatives or assigns, claiming under such pledge, hypothecation, mortgage, or trust, may by due process of law, acquire and have, and hold, use,

and enjoy the said canal, with its appendages and appurtenances, and the property of the said Company, and take and receive the tolls, rents, issues, and profits thereof, during the whole residue of the term for which the said Company is chartered or incorporated, in as full and ample a manner as the stockholders of the said Company could or might have had, used, and enjoyed the same, subject, nevertheless, to all the restrictions, limitations, and conditions contained in the said first-mentioned act or charter of the said Company: Provided, that any deed by which any pledge, hypothecation, mortgage, or trust shall be created by virtue of this act, shall be entered of record in the office of the Secretary of State of this State: Provided, also, that nothing herein contained shall be taken or construed to affect or impair any prior liens that there may be on the said canal, or on the rights or property of the said Company; and that all person or persons, bodies politic or corporate, claiming, by virtue of any pledge, hypothecation, mortgage, or trust, made pursuant to this act, shall have no right or title otherwise than according to the priority of their respective incumbrances, or of the pledge, hypothecation, mortgage, or trust which may have been given or created for his or their benefit.

An Act for the better protection of the Morris Canal, its works and appendages.

Passed March 10, 1832.

Sec. 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That if any person or persons shall, in any manner, wilfully or maliciously destroy, injure or obstruct the Morris Canal, or any of its parts, or any of the works therewith connected, or thereunto appertaining, or shall wilfully or maliciously injure or obstruct the passage of any boat therein, or navigating the same, or, if any person or persons shall, against the will or consent of the person who may be by the said Company appointed to have charge of, or to attend any lock or inclined plane on the said canal, open any gate of such lock or plane, or shall work or attempt to work such plane, or to pass a boat, raft, or other floating thing through or over such lock or plane, or if any person shall wilfully or maliciously let off or discharge water from the said canal, through or by any waste-wier, or waste-gate, or otherwise, or shall shut down or close, either in part or in whole, any feed-gate, or water-wier, or water-gate, which may have been opened to feed the said canal, or any part thereof, or to discharge water for the safety thereof, the person or persons so offending shall forfeit and pay to the said Company the sum of twenty-five dollars, to be recovered by and in the name of the President and Directors of the Morris Canal and Banking Company, in any Court having competent jurisdiction: Provided, that nothing herein contained shall be taken or construed to prevent the said Company from proceeding, if they

shall elect so to do, under and pursuant to the provisions of the thirteenth section of the act, entitled "An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers," against the person or persons so offending, as in the said act is specified, and saving to the said Company the right, also, to prosecute a civil suit as it is given to them by the said act; but there shall, nevertheless, be no more than one penalty imposed upon any person or persons, in virtue of this act and the last-mentioned act, for the same offence.

An Act further supplementary to an Act, entitled "An Act to Incorporate a Company to form an Artificial Navigation between the Passaic and Delaware Rivers," passed 31st December, eighteen hundred and twenty-four.

Passed 19th January, 1835.

Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the capital stock of the Morris Canal and Banking Company be increased, for the purpose of completing the said canal, and paying the debts and claims already incurred by reason of the construction thereof, ten thousand shares; and the President and Directors of said Company are hereby authorized and empowered to obtain subscriptions for said shares, in the manner directed by the act, to which this is a supplement, and to issue certificates for the same, giving preference to original stockholders still holding their stock; and all stockholders of such additional shares, and their assigns, shall thenceforward be incorporated into the said Company; and that from and after the passing of this act, the par value of each and every of the shares in said Company, as well those heretofore authorized as those created by this act, shall be one hundred dollars; and that all holders of existing shares, representing two hundred thousand dollars each, may surrender the same, and shall thereupon be entitled to receive new certificates to double the number of shares by them surrendered: Provided, that no part of the moneys arising from the subscription hereby authorized, be applied to the exercise of any banking or trust powers whatsoever, but solely and exclusively to the completion of said canal, and the payment of its debts as above stated.

An Act further to amend an Act, entitled "An Act to incorporate a Company to form an Artificial Navigation between the Passaic and Delaware Rivers," passed December thirty-one, eighteen hundred and twenty-four.

Passed 5th March, 1836.

Sec. 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same,

That upon such navigable feeder or feeders, as in virtue of this act, or the act of original incorporation, may be constructed by the Morris Canal and Banking Company, for the purpose of conducting into the Morris Canal the waters of Long Pond, or other waters that may be requisite for the supply of the said canal, the said Company shall be and are hereby authorized to charge and receive the same rates of toll as are now lawfully chargeable upon the said canal.

SEC. 2. And be it enacted, That the twenty-seventh section of the act to which this is a supplement, shall not be so construed as to prohibit or prevent the said Morris Canal and Banking Company from letting to use the water necessary for the purposes of the canal, in working other machinery than that requisite for the planes, between Boonton, in the county of Morris, and the Passaic, at Newark; but no other person or persons shall so appropriate the water of said canal, without the consent of said Company: Provided, that nothing in this act contained shall be construed to authorize the said Company to interfere with the rights or privileges of other persons, in the use of the waters of this State, for the said purposes, without their consent; and provided, also, that the said Company shall not carry on or engage in any manufacturing business; and provided, further, that nothing in this act contained, shall be construed to authorize the said Company to use as much of the waters of the Musconetcong Creek, for the said purposes, as to deprive the owners of mills or manufactories on said creek, below the dam at Saxon's Falls, of sufficient water to turn one wheel, as at present, used to drive two run of mill-stones, with the necessary fixtures of the same, during eight weeks in the year, and at least two wheels, each of the same power, during the residue of the year, without the consent of the owners.

SEC. 3. And be it enacted, That in order to enable the Company to procure the requisite lands and premises, and to construct the several basins, reservoirs, and feeders, authorized by the said act of incorporation, and the amendments thereto, the said Morris Canal and Banking Company shall be, and they are hereby authorized to increase the capital stock thereof, to an amount not exceeding six hundred thousand dollars, in shares of one hundred dollars each, for which they may obtain subscriptions and issue certificates, in the manner prescribed in the said act of incorporation, and all holders of such additional shares shall thenceforward be incorporated into the said Company: Provided, that no part of the said sum of six hundred thousand dollars shall be used for banking purposes, but shall be applied exclusively to the objects set forth in this section.

SEC. 4. And be it enacted, That the corporate powers of the said Morris Canal and Banking Company shall be exercised by a Board of Directors, to consist of twenty-three persons, who shall elect a president annually from their body, and possess the other privileges and powers already conferred by law.

SEC. 5. And be it enacted, That within one month after the passing of this act, the Board of Directors shall be divided into five classes,—one consisting of three, and the remaining four of five persons each,—and so arranged that the term of service of one of said classes shall expire at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years; that three directors shall be elected at the end of the first year, and five directors at the end of the second, third, fourth, and fifth years, by the stockholders, in the manner now prescribed by law, and in like manner until the expiration of the charter; but the Supreme Court of this State shall have power to remove a director for misconduct, to be heard on such notice as they shall deem reasonable, on the application of a stockholder, or any person interested.

SEC. 6. And be it enacted, That the following persons shall constitute the first Board of Directors, that is to say: Louis McLane, John S. Crary, James Parker, George Griswold, John Haggerty, Garret D. Wall, Samuel R. Brooks, Washington Irving, John S. Darcy, Henry Yates, Peter M. Ryerson, Christian B. Zabriskie, Edwin Lord, Joseph L. Joseph, Isaac H. Williamson, Daniel Jackson, Jonathan Goodhue, John Travers, Henry W. Hicks, James B. Murray, John Moss, Stephen Whitney, and Philemon Dickerson; that their authority and power as directors under this act shall commence from the time it shall take effect as a law, and that so much of the aforesaid charter, and no more, as is inconsistent with the foregoing provisions, be, and the same is hereby repealed: Provided, however, that the change in the mode of appointing directors, as pointed out in the present act, shall not be obligatory on the stockholders, unless, within one month after the passing of this act, at least three-fourths of the stockholders, in number and amount, shall cause to be filed in the office of the Secretary of State, a writing, signed by the said stockholders, setting forth the number of shares by them held and duly attested by the president and cashier of said Morris Canal and Banking Company, signifying their assent to such change, and also their assent to the persons named in this section as directors.

SEC. 7. And be it enacted, That nothing in this act contained, shall be construed to authorize the said Company to issue their bank notes to such an extent as to create a circulation of said notes of more than two millions of dollars at any one time; and that the said Company, after the fourth day of July next, shall issue no bills of a less denomination than five dollars, unless the Legislature should hereafter repeal the act entitled, "An Act to prevent the issuing and circulation of small notes for the payment of money," passed the fourth day of March, eighteen hundred and thirty-five.

SEC. 8. And be it enacted, that the Legislature of this State shall have it in their power, at any time hereafter (whenever, in their opinion, it may become necessary), to appoint three commissioners,

with full power to examine into the proceedings of the said corporation, and report the same to the Legislature.

Supreme Court—In Equity.

JESSE HOYT,
v.
ABRAHAM G. THOMPSON,
and others.

The Demurrer of Abraham G. Thompson, to the Bill of Complaint of Jesse Hoyt, plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth, that the said plaintiff hath not, in and by his said bill, made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for from or against this defendant; and also that it appears by the said bill that the same is exhibited by the said plaintiff, against this defendant and George B. Fisk, Digby V. Bell, as Auditor-General, George P. Cooper, as Treasurer, Gideon O. Whittemore, as Secretary of the State of Michigan, and the Long Island Railroad Company, as defendants thereto, for several distinct matters and causes, in many whereof, as appears by the said bill, this defendant is not interested; and by reason of such distinct matters, the said bill is drawn out to considerable length, and this defendant is compelled to take a copy of the whole thereof; and by joining distinct matters together, which do not depend on each other, the proceedings in the progress of the said suit will be intricate and prolix, and this defendant put to unnecessary charges and expenses in matters which in no way relate to or concern him. Wherefore this defendant demands the judgment of this honorable Court, whether he shall be compelled to make any further or other answer to the said or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

MANN & RODMAN
Sol'rs and of Counsel for Defendant,
ABRAHAM G. THOMPSON.

Supreme Court—In Equity.

The Demurrer of George B. Fisk, one of the defendants to the Bill of Complaint of Jesse Hoyt, plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill

to be true, in such manner or form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth, that the plaintiff hath not, in and by his said bill, made or stated such a case as doth or ought to entitle him to any such discovery or relief as is therein sought and prayed for, from or against this defendant. And for further cause of demurrer, this defendant shows, that it appears by the said bill, that the same is exhibited by the said plaintiff against this defendant and Abraham G. Thompson, Digby V. Bell, George B. Cooper, Gideon O. Whittemore, and the Long Island Railroad Company, as defendants thereto, for several distinct matters and causes, in many whereof, as appears by the said bill, this defendant is in no way interested; and by reason of such distinct matters, the said bill is drawn out to a considerable length, and this defendant is compelled to take a copy of the whole thereof; and by joining distinct matters together, which do not depend on each other, the proceedings in the progress of the said suit will be intricate and prolix, and this defendant put to unnecessary charges and expenses, which in no way relate to or concern him. Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto; and he prays the judgment of this honorable Court, whether he shall be compelled to make any further or other answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

JOHN A. WEEKS,
Sol'r for George B. Fisk,
JAMES G. KING, JR., *of Counsel.*

Supreme Court—in Equity.

The Demurrer of the Long Island Railroad Company, one of the defendants to the Bill of Complaint of Jesse Hoyt, plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth, that the plaintiff has not, in and by his said bill, made or stated such a case as doth or ought to entitle him to any such discovery or relief as is therein sought and prayed for, from or against this defendant. And for further cause of demurrer, this defendant shows, that it appears by the said bill, that the same is exhibited by the said plaintiff against this defendant and Abraham G. Thompson, George B. Fisk, Digby V. Bell, George B. Cooper and Gideon O. Whittemore, as defendants thereto, for several distinct matters and causes, in many whereof, as appears by the said bill, this defendant is in no way interested; and by reason of such distinct matters, the said bill is drawn out to a considerable length, and this defendant is compelled

to take a copy of the whole thereof; and by joining distinct matters together, which do not depend on each other, the proceedings in the progress of the said suit will be intricate and prolix, and this defendant put to unnecessary charges and expenses, which in no way relate to or concern this defendant. Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto, and prays the judgment of this honorable Court, whether this defendant shall be compelled to make any further or other answer to the said bill; and this defendant humbly prays to be hence dismissed with their reasonable costs in this behalf sustained.

JOHN A. WEEKS,
Solicitor for the Long Island Railroad Company.
JAMES G. KING, JR.,
of Counsel.

Supreme Court—in Equity. Special Term.

JESSE HOYT
v.
ABRAHAM G. THOMPSON et al.

HURLBUT, J.—The statute of the State of New Jersey, which is set out in the bill, provides, that it shall not be lawful for the directors or managers, or any officer or agent of a corporation such as the Morris Canal and Banking Company, after such corporation shall have become insolvent, or suspended its business for want of funds, to make any transfer or assignment of any part of its property or effects, and declares that every such transfer or assignment shall be utterly void as against creditors, except in favor of a *bona fide* purchaser; and by another section of the statute provision is made for the appointment of receivers, and the vesting in them of all the property possessed by the corporation at the time of its first becoming insolvent.

The bill alleges, that after the Morris Canal and Banking Company had become insolvent and suspended its business, the president and cashier of that Company, without the knowledge or assent of a majority of the directors, assigned the mortgage now in question to the State of Michigan, as collateral security for a debt due to that State by the Company, and that the State, by its agents who negotiated the transaction, had full notice that the Company was insolvent, and that the transfer or assignment of any part of its effects was forbidden by law.

If the statute above mentioned is to be held applicable to the assignment in question, its invalidity must be conceded. But it is contended that this statute is in the nature of a bankrupt or insolvent law, and that it has no effect beyond the limit of the State which enacted it, and cannot operate to transfer property situated in, or debts due by residents of, this State. This might present a question

of some doubt, if the case were one involving the application of such a law, to a natural person and his estate; but there seems to be no difficulty in holding, that upon the insolvency of a corporation created by the laws of another State, it is competent for the proper legal tribunals of such State, acting under its laws, to divest the title of the corporation to all its property wheresoever situated, and to vest the same in receivers or trustees, whose title will be recognized and protected in our courts; and that the regulations prescribed by the laws of the State by which the corporation was created for the administration of its assets in case of insolvency, will be enforced in the courts of this State, so far, at least, as that a voluntary assignment of the property of such corporation, made in open violation of such regulations, so as to be void in the courts of the foreign State, will not be permitted to prevail in our courts against the title of the receivers, in whom the courts of such State have vested the property. The late Chancellor of this State decided, that after the property of a foreign corporation bad been vested in receivers by a decree of a court of the State by which the corporation was created, such property, though situated in this State, was protected from seizure under our attachment laws. Thomas *v.* Merchants' Bank, 9 Paige, R. 216. A corporation has no natural existence, nor personal rights; it is the mere creature of legislation, and owes implicit obedience to the laws of the State by which it is created, in the same manner as though such laws were made expressly a part of its charter. It is incapable of removing to another country, and there acquiring new rights, or of escaping from the obligation of the laws which gave it being; and although it may be permitted to invest a part of its capital, or its assets generally, in property situate in a foreign State, it can neither acquire, hold, or dispose of such property in a manner which is forbidden to it by the laws of the State from which it derives its existence. Applying this doctrine to the present case, it seems clear that the courts of this State are as much bound as would be the courts of New Jersey, upon the facts admitted by this demurrer, to declare the assignment made by the Morris Canal Company to the State of Michigan, to be invalid.

The title of the State of Michigan being successfully impeached by the bill, that of the defendant, Thompson, falls with it. The bill alleges that he purchased upon speculation, at a discount of fifty per cent., knowing the title of the State of Michigan to be questionable, and with full notice of all the facts which invalidated it. Under these circumstances he stands in no better position than his assignor did. The fact that he is a citizen of this State, and that the assignment to him was made here, cannot aid him; he fails, not by reason of any defects in the assignment to him, but because the party from whom he purchased had no title.

It is contended by the defendants, that, admitting their title to be open to attack by the receivers of the Morris Canal Company, still

the plaintiff is not in a position to question it. Upon the facts stated in the bill, the plaintiff's title is thus derived: At the time of the assignment to the State of Michigan, Richards and Selden were creditors of the Morris Canal Company upon a bond for $35,000, which was past due and in suit. They subsequently recovered judgment upon this bond, and also other judgments against the Company, and in 1841 filed a bill in the Court of Chancery of New Jersey to obtain satisfaction. In the suit thus instituted, that Court, on the 29th day of January, 1842, made an order in pursuance of the statute I have mentioned, appointing receivers, and vesting in them all the property which the Company possessed at the time it became insolvent. In 1844, the plaintiff purchased the judgments from Richards and Selden, and the Court of Chancery of New Jersey, having decided that these judgments were entitled to priority in payment out of the assets of the Company, made an order directing the receivers to assign to the plaintiff, in part payment of them, the demand against the Long Island Railroad Company, which the officers of the Company had attempted to transfer to the State of Michigan, and the receivers accordingly made such an assignment.

The plaintiff may well claim, either as assignee of the receivers, who represented the rights and equities of all the creditors, or as being himself a creditor, who had pursued the proper legal measures to impeach the assignment, which was void, as against him, and has finally, by a species of equitable execution, obtained a transfer of the demand in question to himself, in part payment of his debt. Viewing the case in either aspect, I can see no legal answer to his claim.

It is objected that the bill does not show that the plaintiff paid any consideration to Richards and Selden for the assignment to him of their judgments. It is alleged that he purchased the judgments, and that is sufficient. The amount of the consideration paid to them is quite immaterial. Their rights were assignable for such consideration as they saw fit to require, and their assignee stands in their place, and possesses exactly the same rights that they had.

Again, it is urged that the assignments under which the defendants claim, was only voidable at the election of the receivers, and that they have never questioned it. It was a sufficient act of disaffirmance on their part to assume still to own the demand in question, by transferring it to the plaintiff. That act was wholly inconsistent with a recognition of the defendant's title.

Finally, it is said that the receivers had but a bare right to file a bill in equity for relief against a fraud, and that such right was not assignable. I am not aware of any legal principle which sustains this position. A right of action to recover property fraudulently or tortiously taken, or in any way wrongfully withheld, or the value of such property, is perfectly assignable. It is true, that by the rules of the common law the assignee of such a demand is obliged to sue in the name of the assignor; but even courts of law, upon an appeal to

their equitable powers, protect the rights of the assignee, and in equity his title is always fully recognized, and is allowed to sue in his own name.

In some peculiar cases, courts of equity have refused to sanction the assignment of certain litigated or disputed claims, as being against public policy, or as savoring of champerty or maintenance; but no objection of that nature can be made against the assignment under which the plaintiff here claims, since it was made in payment of a debt due to him, for which he was unable to obtain other satisfaction, and with the sanction and under the express direction of the Court of Chancery. The statutes relating to champerty and maintenance have no application to judicial sales or transfers. A creditor is even permitted to sell on execution the lands of his debtors, possessed adversely by a third person, and of which a voluntary conveyance of the debtor would be absolutely void. Tuttle *v.* Jackson, 6 Wendell's R. 213, p. 224.

The defendant, Fisk, objects that no sufficient ground is shown for making him a party to the suit. There is some little obscurity in the statements of the bill relating to the interests of this defendant, but I think there can be no reasonable doubt of their meaning. It is alleged that Thompson, on behalf of himself and Fisk, entered into negotiations with the State of Michigan for the purchase of the demand in question, and finally concluded an agreement to that effect; and that in pursuance of this arrangement an auction sale was made, and the claim was purchased by Thompson, on behalf of himself and his associate, not made known; and it is afterwards stated that Fisk, in his capacity of President of the Long Island Railroad Company, assented to an arrangement, which was subsequently made, for a change of securities, by reason of his being interested with Thompson in this purchase. Taking all these statements together, the fair construction of them is, that Thompson and Fisk were jointly interested in the purchase, but that the interest of the latter was not disclosed to the State of Michigan. It is also objected that the bill is multifarious, but I can see no ground for the objection.

There must be an order overruling the demurrers with costs, and giving to the defendants forty days in which to answer the bill.

At a Supreme Court in Equity, held for the State of New York, at the City Hall in the City of New York on the sixth day of January, A. D. 1849, at a special term of said Court:

Present, ELISHA P. HURLBUT, Justice.

JESSE HOYT
v.
ABRAHAM G. THOMPSON and others.

On reading and filing the bill of complaint in this cause, and the several demurrers thereto, interposed by Abraham G. Thompson, and

by the Long Island Railroad Company and George B. Fisk, and upon hearing counsel for the respective parties, it is ordered, that the demurrers be, and the same are overruled, with costs, and that said defendants have forty days to file and serve their answers to said bill.

(A copy,)
JAMES CONNER, *Clerk.*

Supreme Court—in Equity.

JESSE HOYT v. ABRAHAM G. THOMPSON et al. } S. Sanxay, Mann & Rodman.

Read on hearing, 26th July, 1848, bill, demurrer of Fisk, demurrer of Long Island Railroad Company, demurrer of Thompson, Morris Canal charter, complainant's points on demurrer of Fisk, points on demurrer of Thompson, points on demurrer of Long Island Railroad Company, points of defendant, Long Island Railroad Company, points of defendant Fisk, points of defendant Thompson.

(Copy minutes)
JAMES CONNER, *Clerk.*

At a general term of the Supreme Court, held for the State of New York, at the city of New York, on the fifth day of March, 1849:
Present—JONES, HURLBUT, and EDMONDS, Justices.

JESSE HOYT, v. ABRAHAM G. THOMPSON, GEORGE B. FISK, THE LONG ISLAND RAILROAD COMPANY, and others.

On reading and filing due proof of notices of motions on the part of the defendant, Abraham G. Thompson, and of the defendants George B. Fisk, and the Long Island Railroad Company, for a rehearing of the decree made in this cause, on the sixth day of January, A. D. 1849, by Hon. Elisha P. Hurlbut, one of the justices of this Court, overruling the demurrers of the said defendants to the bill of complaint in this cause, and on motion of Mr. A. Mann, Jr., of counsel for the said Abraham G. Thompson, and Mr. James G. King, Jr., of counsel for the said George B. Fisk and the Long Island Railroad Company, in support of said motions, respectively, and Mr. William M. Evarts, of counsel for the plaintiff in opposition thereto, ordered, that said motions be, and the same are, hereby granted.

At a general term of the Supreme Court, held at the City Hall, in the City of New York, in and for the First Judicial District, on the 17th day of November, 1849.

Present—Mr. JUSTICE JONES, presiding, and JUSTICES EDMONDS and EDWARDS.

JESSE HOYT, plaintiff,
against
ABRAHAM G. THOMPSON, THE LONG ISLAND RAILROAD COMPANY, GEORGE B. FISK, and others, defendants.

It appearing to the Court that the above cause is a proper one to be transferred to the Superior Court of the City of New York, and on reading and filing notice of motion, and due proof of service thereof on all the attorneys of the parties who have appeared in the cause, and on hearing S. Sanxay, Esq., of counsel for plaintiff, and James G. King, Jr., and Thomas H. Rodman, Esqrs, of counsel for defendants. It is ordered that the said cause be transferred to the said Superior Court of the City of New York, to be heard at a general term thereof.

(A copy.) JAMES CONNER,
Clerk.

At a general term of the Superior Court of the City of New York, held at the City Hall in the city of New York, on the 7th day of December, A. D. 1849.

Present—JUSTICES DUER, MASON, and CAMPBELL.

JESSE HOYT, plaintiff,
against
ABRAHAM G. THOMPSON, THE LONG ISLAND RAILROAD COMPANY, GEORGE B. FISK, and others, defendants.

This cause having been heretofore transferred to this Court from the Supreme Court of this State, by an order thereof, duly made and entered according to the provisions of the statute in such case made and provided, and having been brought on for argument before this Court, upon the re-hearing of the order or decree made by Hon. Elisha P. Hurlbut, one of the justices of the said Supreme Court, and entered in this cause on the 6th day of January, 1849, and bearing date on that day, overruling the demurrers of the said defendants, Abraham G. Thompson, George B. Fisk, and the Long Island Railroad Company, to the plaintiff's bill of complaint, and after hearing William M. Evarts and S. Sanxay, Esq'rs, of counsel for the said plaintiff, and A. Mann, Jr., Esq., of counsel for the defendant, Abraham G. Thompson, and James G. King, Jr., Esq., of counsel for the defendants, George B. Fisk, and the Long Island Railroad Company, and due deliberation having been had, it is ordered, adjudged, and decreed, that the decree of the said Supreme Court, bearing date

the 6th day of January, 1849, overruling the said demurrers, be and the same is reversed; and the said demurrers of the said defendants are hereby allowed.

And it is further ordered that the said plaintiff's bill of complaint in the cause be, and the same hereby is dismissed with costs as to the said defendants, Abraham G. Thompson, George B. Fisk, and the Long Island Railroad Company.

(A copy.) D. R. FLOYD JONES,
Clerk.

Opinion of the Superior Court of the City of New York,

On re-hearing of Order of Mr. Justice Hurlbut overruling Demurrers of Defendants to Plaintiff's Bill of Complaint.

JESSE HOYT,
v.
ABRAHAM G. THOMPSON, and GEORGE B. FISK, and others. } February 23, 1850.

DUER, Justice. The grounds upon which we shall decide this case will render unnecessary the consideration of many of the questions that were elaborately discussed at the hearing; and as in the progress of a litigation that may still be expected, the same questions may again be raised, we shall abstain from any expression of our present views in relation to them.

The plaintiff claims to be the assignee of a debt of $40,000, which in its origin was due from the defendants, the Long Island Railroad Company, to the Morris Canal and Banking Company, and the payment of which was secured by the bond of the former Company and by two successive mortgages, one a chattel mortgage, the other covering the railroad itself, its rights, privileges, and appurtenances.

The main objects of the bill are to set aside a prior assignment of the debt and its securities from the Morris Canal and Banking Company to the State of Michigan, and a subsequent assignment from the State to the defendant, Thompson, and to obtain, as against the Long Island Railroad Company, the ordinary decree of foreclosure and sale; and if we are bound to conclude from the statements in the bill that the plaintiff is the legal or equitable owner of the debt, or is entitled in his own name to demand its payment, his right to maintain the present suit cannot be questioned.

The plaintiff derives his title from the Receivers of the Morris Canal and Banking Company, who, in consequence of the insolvency of that Company, were duly appointed by the Chancellor of the State of New Jersey, upon the 29th of January, 1842, in conformity to the provisions of an act of the Legislature of that State, entitled

an act "to prevent frauds by incorporated companies." The terms of the order of the Chancellor, which exactly correspond with those of the law, give to the Receivers "full power and authority to demand, sue for, collect, receive, and take into their possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description, belonging to the said The Morris Canal and Banking Company, at the time of its insolvency, or suspension of business, as set forth in the bill of complainants, and to sell, convey, and assign all the said real and personal estate." The proper construction of this order, and of the statute upon which it was founded, is evidently the first subject of inquiry.

We shall not examine the question to the discussion of which the arguments of the counsel on both sides were mainly directed, namely, whether the act of the Legislature of New Jersey, and the order of the Court of Chancery, can be construed to have had an extra territorial operation, so as to have vested in the Receivers a legal or equitable title to any of the property or effects of the corporation not within the jurisdiction of the State. We decline to consider this question, because we are now satisfied (although upon the hearing our impressions were somewhat different) that, in reality, it is not involved in the cause.

It may be perfectly true, that it is competent to a State Legislature to direct a transfer to receivers of all the property and effects, wherever situated, of an insolvent corporation created by its own laws, and that it would be our duty to give full faith and effect to the judgment or decree of a State tribunal, in conformity to the provisions of such a statute. But there is conclusive evidence that in this cause the act of the Legislature of New Jersey, and the consequent order in Chancery, were not designed to operate, even within the jurisdiction of that State, as a transfer to the receivers of the whole or any portion of the property of the insolvent corporation. In a case which escaped the attention of the counsel—Willink *v.* The Morris Canal and Banking Company, 3 Green Ch. R. 400—the Chancellor of New Jersey expressly decided that the only effect of the statute and of the order which he had founded upon its provisions, was to substitute the Receivers in the place of the Directors of the Company, for the purpose of settling up and closing its affairs, and that the Company was not dissolved, nor the title to its property changed, but only a power delegated to the Receivers to take charge of and sell it. This construction of the statute we think is fully justified by its terms, and, at any rate, it is that which we are bound to adopt.

In each State it is the province of its courts of justice to determine the construction of its statutes, and as the construction which they adopt becomes the law of the State, it must be regarded and followed as such by all foreign tribunals. Hence the averment in the present bill, that by force of the order or decree of the Chancellor of New

Jersey, all the property and assets, including the debt in controversy, belonging to the Morris Canal and Banking Company, when it first became insolvent, were vested in the Receivers, must be rejected as an unsound and groundless conclusion of law.

The Company was not divested of any portion of its property, and no title or interest of any kind passed to the Receivers. It may be thought, however, that although the Receivers had only a naked authority, not clothed with any title or interest, yet substantially the same question, that we have declined to consider, is still necessary to be decided. The extent of their authority, it may be said, is as necessary to be ascertained as the extent of their title, had a title been given to them. But in reality, if the acts of the Receivers are to be judged by the same rules that would have been applied to those of the Directors, no such question is requisite to be considered. If the assignment under which the plaintiff claims was made by the Receivers in the name and under the seal of the Company, it is just as valid as if it had been made under the sanction of the Directors in a similar form; while on the other hand, if the assignment was made by the Receivers in their own names, and as the transfer of a title vested in themselves, its invalidity can hardly be doubted. (Bank of Metropolis *v.* Guttsliech, 14 Peters R. 19; Hatch *v.* Barr, 1 Ohio R. 390.) The averments in the bill upon this subject are materially defective. They leave it wholly uncertain whether the assignment upon which the plaintiff relies as the source of his title was made by the Receivers in their own right and in their own names, or as the representatives and in the name of the Company. It is stated to have been made under a special order of the Chancellor, but to enable us to say affirmatively that under this order the plaintiff has acquired the title which he claims, the terms of the order, and of the assignment that followed, ought to have been fully set forth. These are defects, however, that may be supplied by amendment, and as we desire to reach the merits of the case, we shall consider the bill in these respects as amended. We shall assume that the assignment was made in the form that perhaps alone could render it valid. We shall assume that it was an act of the Company, sanctioned by the Court and directed by the Receivers.

The question, therefore, whether the plaintiff by virtue of his assignment became the legal or equitable owner of the debt in controversy, is seen to be exactly the same as whether an assignment, having this effect, could at that time have been ordered by the Board of Directors, had not their authority been superseded by that of the Receivers. And it is certain that no such transfer could have been made unless the debt at that time belonged to the Morris Canal and Banking Company, and a suit for its recovery, in the name of the Company, could then have been maintained.

It is true that the decree appointing the Receivers authorizes them to sell and assign any of the debts belonging to the Company at the

time of its insolvency and suspension of business, as set forth in the bill upon which the decree was founded. And it is possible that the time of the insolvency thus set forth may have preceded any assignment of the debt and its securities to the State of Michigan. But had this fact been distinctly and positively averred, which it certainly is not, we should have regarded it as wholly immaterial, since as the State of Michigan was not a party to the suit in which the Receivers were appointed, its rights could not be affected by a decree referring the insolvency of the Company to any day prior to that upon which its title was acquired. It was beyond the power of the Chancellor to avoid, by an *ex parte* decree, any conveyance or assignment made by the Company before the commencement of the suit; nor could we attribute this effect to his decree without violating a rule of natural and universal justice, which the jurisprudence of every civilized nation adopts, namely, that those only are bound by a judicial sentence to whom an opportunity of defending their rights has been given. It has been most justly held that an assignment in bankruptcy, which vests in the assignees all the property of the bankrupt from the time of the commission of the acts of bankruptcy set forth in the proceedings, has no retroactive force, so as to divest or impair an intermediate title derived from the bankrupt. (Holmes *v.* Remsen, 4 Johns. Ch. R. 477.) And it would be still more unreasonable to attribute this force to a decree which, without attempting to change the property, confers only an authority to sue.

We therefore repeat, that unless it clearly appears, from the statements in the bill, that the Morris Canal and Banking Company had a valid title to the debt in controversy at the time of its transfer by the receivers, and could then have maintained a suit for its recovery, the title of the plaintiff, which can only be valid as derived from the Company, cannot be sustained. The bill, as we understand it, expressly avers that the debt was at this time due to the Company, and the question that we are required to determine is, whether this essential averment is sustained or disproved by other facts alleged or admitted in the bill.

The facts necessary to be considered in determining this question, must now be stated. It appears from the bill, that the Morris Canal and Banking Company, was largely indebted to the State of Michigan, and for the purpose of securing the eventual payment of this debt, in whole or in part, the president and cashier of the bank, on the 9th of December, 1840, entered into an agreement, under the seal of the Company, with the treasurer and agent of the State, by which they transferred and assigned to the State the debt due from the Long Island Railroad Company, and the bond and chattel mortgage, which at that time were the only securities for its payment. It is true, that the agreement refers to a judgment against the Long Island Railroad Company, as the security assigned, but the bill admits that this is an error in description, and that the bond and

chattel mortgage are the securities which were really meant, and were, in fact, assigned and delivered. It further appears, that on the 6th of March, 1841, the Long Island Railroad Company, as an additional security for the satisfaction of its debt, executed and delivered to the Morris Canal and Banking Company the second mortgage, covering the railroad, its privileges and appurtenances, and all other lands and real estate belonging to the Railroad Company, in the counties of Queens and Suffolk; and that on the 26th of April, in the same year, this mortgage was assigned, as a further security, to the State of Michigan, and on the 28th, together with the assignment, was recorded in the Clerk's Office of the County of Kings. It also plainly appears, from statements in the bill, although the fact is not distinctly averred, that this mortgage passed into the possession of the State of Michigan, and is now held by its assignee, the defendant Thompson.

Considering the assignment of the debt and its securities to the State of Michigan, as an entire transaction, the main object of the bill is, to set it aside as fraudulent and void; and as all the defendants are expressly charged with notice of the facts upon which the allegation of fraud is rested, the case must be determined upon the same principles that must have been applied, had the State of Michigan made no transfer of the title, if any, that it originally acquired.

The questions to be determined, therefore, are, whether the State of Michigan, under the assignments that have been stated, acquired any title to the debt in controversy; and if this question must be answered in the affirmative, whether the nature of its title was such, that so long as it was outstanding, it precluded a transfer of the same debt by the Morris Canal and Banking Company, or its receivers, to the plaintiff or any other person. It is insisted, upon the part of the plaintiff, that, assuming the averments in the bill to be true, the pretended title of the State of Michigan was absolutely void, or if voidable only, that its invalidity may be declared, and payment of the original debt, as now due to the plaintiff, be enforced by a decree in the present suit, upon the following grounds:

1st. That the president and cashier of the Morris Canal and Banking Company, in transferring the debt and its securities to the State of Michigan, acted without authority and in breach of their trust, and that their want of authority was known to the State of Michigan, or its agents; and 2d, that when the assignments were made, the Company was insolvent, and its insolvency known to the State of Michigan; and consequently, that the transaction was fraudulent and void, under the provisions of the act of the Legislature of New Jersey, to which we have before referred. These objections will be considered in the order in which they have been stated.

The averments in the bill in relation to the first assignment, that of the bond and chattel mortgage, are explicit and full; that it was made by the president and cashier, in violation of their trust, with-

out any authority, expressed or implied, and that these facts were at the time fully known to the agent of the State of Michigan. But the averments in respect to the second and most important assignment, that of the mortgage upon the railroad and its privileges, are materially different; and it is manifest, that if this assignment operated as a transfer of title, its necessary effect was, to ratify and confirm the prior transaction.

If it passed the mortgage, it must also have passed the bond to which the mortgage refers, and the payment of which it was given to secure. This assignment, which was made by a separate instrument, under the seal of the Company, signed by the president, and attested by the cashier, embodies in its attestation clause, the positive declaration, that it was made in pursuance of a resolution of the Board of Directors; and to the truth of this fact, the president and cashier, or one of them, must have made oath, or the instrument could not have been recorded. It is true, the bill avers that the assignment was made without any authority from the Board of Directors, and that the representation of such authority contained in the attestation clause, was false and fraudulent. But it does not aver that the falsity of the representation was known to the State of Michigan or its agents, or that they were in any manner parties to the alleged fraud; and in the absence of any charge of notice, or participation, we must intend that the State of Michigan received the assignment in good faith, and relied upon it as conferring a title that the Company could never deny or impeach. Taking into consideration all the facts that have been stated, we exceedingly doubt whether the Morris Canal and Banking Company was not estopped from denying the validity of the assignment as a corporate act, and, consequently, whether the averment of the want of an authority derived from its directors ought not to be wholly disregarded. As the will of a corporation can be manifested only through its agents, there can be no safety in dealing with a corporation at all, unless it has agents who can furnish to others conclusive evidence of its acts; that is, agents by whose declarations and conduct, when acting within the general scope of their authority, the corporation, in respect to innocent purchasers or assignees, must be bound. We should, therefore, have great difficulty in saying that the State of Michigan, in the present case, had not all the evidence, that the transfer of the debt in controversy was authorized by the Board of Directors, that the law can reasonably require. Let it be admitted that the parties interested in a transaction which depends for its validity upon the action of a Board of Directors, are bound to inquire whether the necessary resolution had been passed, the question still remains to be answered, how and of whom is the inquiry to be made? And what is the nature of the evidence which they are justified in demanding, and upon which they are warranted to rely? That they are bound, or are entitled to demand a personal inspection of the books of the

corporation, in which the proceedings of the directors are recorded, has never been held nor supposed; and if not, those proceedings can only be made known by the officers to whom the custody of the books is intrusted. These officers must, therefore, be considered as the agents by whom the corporate will is to be manifested; they have a general authority to impart the knowledge to those who are interested to obtain, and have the right to possess it; and upon principle, the communication which they make to such persons, must be binding upon the corporation which trusts and employs them. That the responsibility of a principal, is not confined to cases in which his agent acts under an express or implied authority, but exists in all cases where the agent is held out to the public as possessing the competent authority, is a doctrine which pervades the whole law of agency, and is constantly applied to the protection of innocent parties (Story on Agency, § 443 and § 127, and cases there cited).

The present case seems to be clearly embraced within the principle in which this wise and equitable doctrine is founded.

It is not our intention, however, to place our decision upon this ground; we cannot find that the exact question has ever been determined, and it must be admitted that its proper determination is rendered somewhat doubtful by the language of judges as well as of text writers. We therefore prefer to decide the case upon reasons not merely satisfactory to our own minds, but fully borne out by prior decisions.

Whilst all the modern authorities agree that the seal of a corporation is not alone sufficient to authenticate the deed or instrument to which it is affixed, it is equally certain, that where the corporate seal is proved to have been affixed by the officers to whom its custody is intrusted, and the instrument is signed and attested in the usual form by the same officers, it will be presumed that they were fully authorized to perform the act, and the burden of proving that they exceeded their power is cast upon the party who impeaches the title which the instrument purports to convey. Clark *v.* The Imperial Gas Company, 4 Barn. & Adolph., 315; President, &c., of Berks and Dauphin Turnpike Road *v.* Myers, 6 Sergt. & Rawl. 12; Baptist Church *v.* Mulford, 3 Halstead, 183; Johnson *v.* Bush, 3 Barb. Ch. R. 239.

It follows inevitably from this doctrine that even where the corporate seal has been affixed to an instrument so attested, without authority, the title of a bona fide purchaser or assignee, so far from being absolutely void, is presumptively valid; and, until it has been set aside or declared void by a judicial sentence, constitutes him in judgment of law the legal or equitable owner of the property or chose in action conveyed or assigned. Hence, if we remove from the present case (as in reference to the question we are now considering, we certainly must), every imputation of notice to the parties, it cannot

be doubted that the State of Michigan, having in its possession the *prima facie* evidence necessary to sustain its claims, had a perfect right to demand and enforce the payment of the debt, nor that every payment made by the Long Island Railroad Company would have operated, according to its extent, as an entire or partial discharge from its prior liability; while, on the other hand, the Morris Canal and Banking Company, from its inability to produce the securities upon which its title rested, was in no condition to assert its rights, nor until the presumptive title which its agents had given had been ascertained and declared to be void, could it justly demand or legally enforce the payment of the debt. It cannot, therefore, be said with truth that the debt belonged to the Morris Canal and Banking Company at the time of its transfer by the receiver. The title of the Company had been for the time divested by the act of its agents, nor could it be revested until this act had been rescinded by the consent of the parties, or by judicial sentence. In the interval, all that remained to the Company was a right of action to set aside the assignment and reclaim the securities; and, until by these means its original title was restored, it had not the power to make another assignment of the debt, so as to enable the assignee to maintain an action in his own name for its recovery. The debt, it must be remembered, was not a debt resting in parol, but the bond and mortgages which were the securities for its payment, were also the proper evidences of its existence. From these the debt could not be separated, but its assignment, if operative at all, must have operated to pass the securities to which it was attached. To assign the debt, was to assign the bond and mortgages. Such, the plaintiff avers in his bill, was the intention and effect of the assignment under which he claims, and it is upon the truth of this allegation that he founds his prayer for relief. The question, therefore, is most distinctly raised, whether an assignment of securities, which are in the possession of a third party, claiming in good faith to be the owner under a *prima facie* title, can be sustained? And our examination of the subject compels us to say that, without departing from the law as it has long been settled, we cannot, as a Court of Equity, give effect to such an assignment, or lend our aid in any manner to a person claiming under it. Such a person has not a *locus standi in judicio*. The assignment of a debt under such circumstances is the transfer of a lawsuit, to be prosecuted by the assignee at his own expense, and the sale of a disputed title by a party out of possession. It is therefore illegal and void, as involving, and that in an aggravated form, the offences both of maintenance and champerty. Power *v.* Knowler, 2 Atk., 224; Strachan *v.* Brander, 1 Eden 308; Wallace *v.* Duke of Portland, 3 Ves., 493; Stevens *v.* Bagwell, 15 Ves., 139; Wood *v.* Donnes, 18 Ves., 128; Hartley *v.* Russell, 2 Simons & Steuart, 25. Harrington *v.* Long, Milne & Kean, 590. Stanley *v.* Jones, 7 Bing. 369; 1 Hawkins, P. C. B. 1, ch. 86; Story's Eq. Jur. § 1048, '49, '50.

It is a mistake to suppose that the law of champerty is derived exclusively from the provisions of the statute, which we have re-enacted, that forbid the conveyance or sale of lands by a party out of possession. The statutory prohibition is only a partial affirmance of a general rule of the common law. The common law forbids every transfer of a disputed title or right, whether relating to real or personal estate, by a person out of possession, and it is manifest that the reasons of public policy upon which the interdiction is founded, apply with equal force to every description of property. Hawkins P. C. ut sup., 2 Story's Eq. Jur. § 1048; 4 Black Comm. 135; Burke *v.* Green, 2 Ball and Beatty, 517; Cholmondeley *v.* Clinton, 4 Bligh, N. S. 4; Baker *v.* Whiting, 3 Sumner, 475.

It is true that the rule of the common law, in its original extent and strict interpretation, prohibited every assignment of a chose in action; but although in modern times the rule has been so far relaxed as to permit the assignment of a debt where the securities are in the possession of a creditor, it has never been held or intimated that such an assignment can be valid where it is not the amount or existence of the debt, but the title of the creditor which is disputed, and the securities are at the time in the possession of a third party claiming *bona fide* under an adverse title. Nor could such a decision be made without an entire subversion of the principle upon which the law of champerty is founded, and an entire abandonment of the rules by which Courts of Equity, in judging of the validity of such transactions, have hitherto been governed. We shall err greatly if we imagine that the law upon the subject is enforced with less rigor in Courts of Equity than in Courts of Law; on the contrary, the doctrine in Equity is extended to many cases which do not fall within the legal definition of Maintenance or Champerty, but which, as leading to the same mischievous consequences, are equally repugnant to the policy of the law; and the aid of the Court is uniformly and sternly denied whenever the transaction, in quaint but expressive language, even *savors of Champerty*. Powell *v.* Knowler; Strachan *v.* Brander; Wallace *v.* Duke of Portland; Wood *v.* Downes.

The learned judge from whose decision this appeal has been taken, observed that a "right of action to recover property fraudulently or tortiously taken, or in any way wrongfully withheld, or the value of such property, is perfectly assignable, and that in Equity the title of the assignee is fully recognized." But these observations, could we admit them to be just, have no application where the property sought to be recovered is held in good faith under an adverse title. It is not necessary, however, to advert to this distinction, since the observations of the learned judge, admitting them to be applicable, are certainly inaccurate. They are inconsistent with the adjudged cases, and are decisively refuted by authorities to which the attention of the judge could not have been directed. We deem it sufficient to refer to the decision of Chancellor Kent in Arden *v.* Patterson, 5 Johns.

Ch. R. 44; a decision pronounced upon full deliberation, and which, until we shall be better instructed by a higher tribunal, we must regard as authoritative and binding. The plaintiff Arden was wrongfully in possession of a certain number of pipes of wine, the value of which the assignees of the real owner, an insolvent, had attempted to recover in an action of trover, but from the defect of evidence had been forced upon the trial to submit to a nonsuit. The defendant Patterson, an attorney, then purchased the claim from the assignees for a trifling sum, believing that he would be able to establish its validity. He accordingly commenced a new suit against Arden, and succeeded in obtaining a judgment for more than five thousand dollars. The assignees, in whose names the suit had been brought and the judgment recovered, repenting of their bargain, and perhaps thinking that they had been overreached, then made a compromise with Arden, and upon receiving from him somewhat less than half of the amount of the judgment, acknowledged its satisfaction. The Supreme Court, however, upon the application of Patterson, vacated the satisfaction, and authorized him to levy by execution the whole amount of the judgment. Arden and the assignees then united in filing the bill, praying that the original sale and assignment to Patterson might be declared illegal and void, and that upon receiving back the consideration-money which he had paid, with interest, he might be perpetually enjoined from proceeding on the judgment; and the Chancellor, upon the distinct ground that the sale to Patterson was void for champerty, granted the relief which was asked. It is true that in his opinion he laid much stress upon the circumstance that Patterson was an attorney, but as he was not the attorney of the assignees, it is plain that there was no such abuse of professional confidence or exercise of undue influence as could have furnished, of itself, a substantive ground of relief; the circumstance, therefore, could only have been adverted to as aggravating, and not as necessary to constitute the offence which rendered the transaction void; and had it not appeared in the case, it is evident from the whole train of the reasoning of the Chancellor, as well as from the authorities to which he refers, that the same decree would have been pronounced.

Unless a valid distinction can be stated between a sale of goods during an adverse possession, and an assignment of securities for a debt, it is manifest that the decision in Arden *v.* Patterson applies to the present case with a conclusive force; and as no such distinction has been pretended or can be supposed to exist, we cannot refuse to yield to its authority.

It is true that Mr. Justice Story has expressed a doubt whether the doctrine in Arden *v.* Patterson can be easily reconciled with other cases, and particularly with Harrington *v.* Long, 2 Milne & K. 592, and Thalhimer *v.* Brinckerhoff, 20 John R. 392; but we confess that, upon an attentive examination of the case referred to, we have been unable to detect the inconsistency which this learned jurist supposes

to exist. In all these cases there were special circumstances, which, in the opinion of the court, rendered it proper to except them from the operation of a general rule, the existence and terms of which were fully admitted. There were no similar circumstances in Arden *v.* Patterson, nor any such to be found in the present case. It may perhaps be allowed that the Chancellor, in Arden *v.* Patterson, in setting aside the assignment after Patterson had obtained a judgment, and his rights, as owner of the judgment, had been affirmed in a court of law, went somewhat beyond the English cases; but, in the principle of his decision, he is fully sustained by a series of adjudications, and especially by Strachan *v.* Brander, Wallace *v.* Duke of Portland, Stevens *v.* Bagwell, and Wood *v.* Downes. The more recent case of Prosser *v.* Edwards, 1 Young & Coll., Ex. R. 481, bears a closer resemblance to the present than any that have been cited, and, in fact, so perfect is the similarity, that there is hardly a sentence in the elaborate opinion of Lord Abinger, which, with a single alteration of the names of the parties, we might not with entire propriety engraft into our own. The positions which his lordship establishes, and upon which the court founded its decision, are, that the right of filing a bill in Equity to set aside a prior conveyance or assignment, upon the ground of fraud, is from its nature incapable of being assigned, and that the rights of an assignee will never be admitted or enforced, unless it appears that the assignor at the time of the assignment had a substantial possession, or an immediate capability of personal enjoyment of the property conveyed; in other cases he has only a naked right of action, the transfer of which, as an act of champerty and maintenance, the policy of the law strictly prohibits. Applying these rules to the case before the court, his lordship added: "It was impossible for the assignee in this case to derive any benefit from the security, except through the medium of this court; he has purchased, therefore, a hostile right of action to bring parties into a Court of Equity as defendants to a bill filed for the purpose of obtaining the fruits of his purchase;" remarks which describe with exact and literal truth the condition of the plaintiff in the present suit. It was impossible for the plaintiff to foreclose the mortgage against the Long Island Railroad Company, or in any manner enforce the payment of the debt, or, indeed, place himself in a situation to acknowledge its satisfaction, until he had set aside the assignment to the State of Michigan, and from the State to the defendant Thompson; he purchased, therefore, no more than a right of action, which he knew at the time of the purchase could only be rendered available by a hostile suit. Prosser *v.* Edmonds is not, like Arden *v.* Patterson, a controlling authority, but the reasoning of the learned Judge to which we have referred, commands our entire assent, and justifies in their whole extent the conclusions to which we had been led by our examination of the prior decisions.

It remains, then, only to inquire whether there are any special

circumstances that can place the transaction upon the validity of which we are required to pass, beyond the legitimate scope of the doctrine which we have shown to be established. It is said that the general rule which forbids the transfer of real or personal property, including choses in action during the continuance of an adverse possession, is not applicable to a judicial sale; and if the term judicial sale is properly restricted in its application, the truth of the proposition need not be denied; but if the assignment under which the plaintiff claims was made by the receivers in the exercise of their general powers, we cannot understand upon what ground it is supposed that it can be regarded as a judicial sale. It is true that the receivers were appointed by an order or decree of the Court of Chancery, but their powers as receivers were defined by the statute under which the Chancellor acted in making the appointment, nor is there the slightest reason to suppose that he meant by his decree to enlarge their statutory powers. Under the terms of the statute they had no authority, express or implied, to sell any portion of the real or personal estate of the Company, which they had not reduced into possession; and it is this interpretation of the law that the Chancellor must have adopted when he decided that they were substituted in the place and clothed with the powers of the directors. Hence a sale made by them can with no more propriety be denominated judicial, than a sale by the directors whom they superseded.

It has, however, been strongly urged, that the receivers in making the assignment, were not acting in the exercise of their general powers, but in pursuance of a special order of the Court, as the bill expressly alleges. We shall not enter upon the question whether such an order could be regarded by us as a valid and independent source of title; it is sufficient to say, that as neither the terms of the order, nor of the petition upon which it is founded, are set forth in the bill, we are left wholly without the means of judging of its intention and effect. The Chancellor, when he granted the order, may have supposed that the securities for the debt were in the actual possession of the receivers; he may have been wholly ignorant of their prior assignment to the State of Michigan; and in the absence of any averments in the bill to contradict the presumption, we are bound to presume that he was so; we are bound to presume that he would not have directed the assignment had the facts been fully disclosed to him; since we cannot intend that, contrary to the policy of the law and the settled maxims of his Court, he would have given his sanction to the purchase of a lawsuit and the sale of a disputed title, still less can we intend, that in the exercise of a special jurisdiction, he would have exceeded the authority which the legislature had conferred. Should it hereafter appear, that the order which is relied on, was founded upon a full disclosure of the material facts, it will then become necessary to consider, first, whether it was competent to the Chancellor to enlarge the statutory powers of the receivers;

and, secondly, whether the validity of an assignment of securities upon property in this State, and especially of mortgage upon real estate, must not be determined by an exclusive reference to our own law, unaffected by the decision of any foreign tribunal. These are grave and difficult questions upon which we forbear to express or intimate an opinion, since we are satisfied that the bill, as framed, reveals no circumstances to prevent the application of the general doctrine of the Court, in relation to champerty and maintenance; and, consequently, that it is our duty to declare that the assignment, under which the plaintiff claims, having been made to him when the securities were in the possession of a third party, claiming under a hostile title, is illegal and void.

The observations that have now been made, it is evident, dispose of the entire case, and render it unnecessary to consider whether the assignment to the State of Michigan was rendered void by the alleged insolvency of the Company at the time it was made, and by the knowledge of that insolvency which the bill imputes to the State and its agents. Let it be admitted that the title of the State was liable to be impeached upon this ground, it cannot be pretended that the assignment was absolutely void; nor that until it was set aside, can it be denied that the possession of the State under it was clearly hostile. Nor is this all. If the assignment was the act of the Company (and it is only upon this supposition that any question as to the effect of the insolvency of the Company can properly arise), the transaction, as between the parties, was perfectly valid; for, not only is the rule universal, that a fraudulent conveyance can never be impeached by a party privy to the fraud, but by the express terms of the New Jersey act, to which we have so often referred, it is only as against its creditors, that the conveyance of an insolvent corporation is declared to be void. The decision of the Chancellor in Willink *v.* The Morris Canal and Banking Company, as we understand it, denies to the receivers any authority to maintain a suit in their own names that could not be maintained in the name of the corporation; and if a bill similar to the present, in its allegations of fraud, could not have been filed by the receivers, either in their own names or in the name of the Company, there remains no pretence for saying that it can be sustained in the name of the plaintiff. We are not, however, to be understood as now deciding that the receivers might not have filed a bill in their own names, seeking in behalf of the creditors, the same relief that the plaintiff requires; but if this right of action subsisted in the receivers, it was, in the language of Lord Abinger, a hostile and naked right, which as not clothed with any possession, or immediate capacity of possession, they had not the power to assign.

The positions that although the plaintiff may not be entitled to claim as an assignee, the bill may yet be sustained as the bill of a judgment-creditor, or as filed by one creditor in behalf of all, scarcely

require to be noticed. They are plainly untenable, and as such, were virtually abandoned by the able counsel who last addressed us on the part of the plaintiff. The only title set up in the bill is an exclusive title in the plaintiff as assignee. It is upon this ground alone that he claims relief; it is to this state of facts alone, that the relief which he claims is adapted. Considering the bill as a judgment-creditor's bill, or as filed for the common benefit of all the creditors, the averments necessary to mark its distinctive character are wholly wanting.

The demurrer must, therefore, be allowed, and the bill be dismissed with costs; but the usual liberty to amend is given to the plaintiff, and we think it not unreasonable to allow him forty days for that purpose. In granting this liberty, however, we are not to be understood as saying that the bill can, in our judgment, be so amended as to enable the plaintiff to maintain the suit in his own name, and for his own exclusive benefit; but as he may and probably will, desire to appeal, it is just that he should have the opportunity of making the bill as perfect as he can before his appeal is taken.

(Copy.) GEORGE H. E. LYNCH,
Clerk.

At a special term of the Superior Court of the City of New York, held at the City Hall, in the city of New York, on the 11th day of February, A.D. 1850.

Present: JOHN DUER, Esquire, Justice.

JESSE HOYT, plaintiff,
v.
ABRAHAM G. THOMPSON, et al. defendants.

It appearing to this Court, that since the decree in this cause, overruling the order of Mr. Justice Hurlbut in this cause, dated January 6, 1849, dismissing the bill of complaint filed in this cause, that George B. Fisk, one of the defendants in said bill of complaint mentioned, has died; and it appearing that Honora Fisk, William Henry Bolton, and David B. Baylis, are the executors and personal representatives of said George B. Fisk, and upon reading and filing an affidavit and order to show cause why this action should not stand revived against the said executors and personal representatives of said George B. Fisk; and, upon hearing Mr. S. Sanxay, of counsel for plaintiff, and Messrs. Mann and Rodman, for defendant, Abraham G. Thompson, and Mr. John A. Weeks, for defendants, the Long Island Railroad Company, and upon filing proof of service of notice of said order to show cause upon said executors and personal representatives aforesaid. It is ordered, on motion of Mr. S. Sanxay, that this suit stand revived against said Honora Fisk, William Henry Bolton, and David B. Baylis, the executors and personal representa-

tives aforesaid, of said George B. Fisk, and said suit is accordingly revived and continued against them.

(A copy.) D. R. FLOYD JONES,
Clerk.

New York Superior Court.

JESSE HOYT, plaintiff,
v.
ABRAHAM G. THOMPSON, THE LONG ISLAND RAILROAD COMPANY, HONORA FISK, WILLIAM HENRY BOLTON, and DAVID B. BAYLIS, Executors of GEORGE B. FISK, deceased, and others, defendants.

The above named Jesse Hoyt appeals to the Court of Appeals from the order or decree of the Superior Court of the City of New York, entered in this cause, bearing date seventh day of December, A. D. 1849.

New York, May 18, 1850. S. SANXAY,
Attorney for Appellant.

State of New York, *ss:*

Pleas in the Court of Appeals held in the Court Room in the city of Syracuse, on the 23d day of October, A. D. 1851, before the Judges of said Court.

Witness, CHARLES H. RUGGLES, Esquire, Chief Justice.
CHARLES S. BENTON, Clerk.

JESSE HOYT — Appellant.
v.
ABRAHAM G. THOMPSON, and others — Respondents.

Be it remembered that on the 10th day of June, 1850, the appellant in this cause came here into the Court of Appeals, by S. Sanxay, his attorney, and William M. Evarts, his counsel, and filed in the said Court his notice of appeal, and return thereto, from a judgment of the Superior Court, and the respondents in said cause afterwards appeared in said Court, by Mann and Rodman, their attorneys, and S. Beardsley, their counsel, which said notice of appeal and return thereto filed as aforesaid, are hereunto annexed, whereupon the said Court of Appeals, after having heard this cause argued by Mr. William M. Evarts, counsel for the appellant, and by Mr. Beardsley, counsel for the respondent, and after due deliberation having been had thereon, did order and adjudge, that the judgment of the Superior Court appealed from in this cause be reversed, for the plaintiff,

on the demurrer, with costs to the plaintiff of the appeal from the Special Term of the Supreme Court to the General Term. It was also ordered that the record and proceedings be remitted to the Superior Court, there to be proceeded on according to law.

Wherefore it is considered that the said judgment of the Superior Court be reversed, annulled, and altogether held for nothing, and that judgment be rendered for the plaintiff on the demurrer, with costs as aforesaid.

And hereupon, as well the notice of appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by them given in the premises, are by the said Court of Appeals remitted to the Superior Court of the City of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Superior Court before the justices thereof, &c.

C. S. BENTON, *Clerk.*

COURT OF APPEALS, CLERK'S OFFICE,
Albany, October 30th, 1851.

I hereby certify that the preceding Record contains a correct transcript of the proceedings in said cause to the Court of Appeals with the papers originally filed therein attached.

C. S. BENTON, *Clerk.*

At a term of the Superior Court of the City of New York, held at the City Hall in the said city, the 1st day of November, 1851.

Present—THOMAS J. OAKLEY, Esq., Chief Justice.

JESSE HOYT
v.
ABRAHAM G. THOMPSON, and HONORA FISK, WILLIAM HENRY BOLTON, and DAVID B. BAYLIS, Executrix and Executors of GEORGE B. FISK, deceased, and THE LONG ISLAND RAILROAD COMPANY, impleaded with others.

On reading and filing the Remittitur from the Court of Appeals of the State of New York in this cause, on motion of S. Sanxay of counsel for plaintiff, it is ordered that the decree of the said Court of Appeals be, and the same is, hereby made the decree of this Court, and further, that judgment be rendered for the plaintiff on the respective demurrers of the above named defendants, Abraham G. Thompson, George B. Fisk, and The Long Island Railroad Company, by them severally interposed, with costs, and that the said defendants file and serve their answers to the bill of complaint filed

in this cause within forty days from the service hereof, and that this order be entered *nunc pro tunc*, as of the twenty-third day of October last, the day of the decision of the said Court of Appeals.

(A Copy.)

D. R. FLOYD JONES, *Clerk.*

Superior Court, late in Supreme Court in Equity.

JESSE HOYT,
against
ABRAHAM G. THOMPSON, HONORA FISK, Executrix, WILLIAM H. BOLTON and DAVID B. BAYLIS, Executors of GEORGE B. FISK, THE LONG ISLAND RAILROAD COMPANY, and others.

The answer of the Long Island Railroad Company, one of the defendants in the above entitled action, to the bill of complaint of Jesse Hoyt, complainant.

The said defendants, now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained thereunto, for answer, or unto so much thereof as the said defendants are advised is material for them to make, answer, and say, that they have not sufficient knowledge or information to form a belief, and, therefore, can neither admit or deny the allegation contained in said bill of complaint from the first fol. to and including the sixth folio in said bill, and leave the said plaintiff to make such proof thereof as he may be advised.

And the said defendants, further answering, admit that on the twenty-fourth day of April, one thousand eight hundred and thirty-four, the Legislature of the State of New York passed an act to incorporate The Long Island Railroad Company, and that in pursuance of the provisions in said act, the said Company became organized, and went into operation; and said defendants further admit the various acts amending the said last-mentioned act, as stated in said bill of complaint.

And the said defendants, further answering, admit that George B. Fisk was president of The Long Island Railroad Company, and one of the directors thereof, from the fourth day of May, in the year one thousand eight hundred and thirty-eight, to the sixth day of April, one thousand eight hundred and forty-seven; but they deny that he was the sole manager of said Long Island Railroad Company.

And the said defendants, further answering, admit that, in the course of the lawful dealings between the Morris Canal and Banking Company and the said The Long Island Railroad Company, the said

Railroad Company became indebted to the said Canal and Banking Company in the sum of about sixty thousand dollars, and that to secure the payment thereof, the said Railroad Company, on the third day of November, in the year one thousand eight hundred and thirty-nine, executed and delivered to the said Morris Canal and Banking Company a mortgage, signed by said George B. Fisk, as president, upon all the following described goods and chattels, viz.: Three locomotive engines, with tenders, viz.: Ariel, Hicksville, and Post Boy; seventeen passenger cars; forty-one burden or freight cars; three baggage cars; five turning tables; two cranes, for hoisting; two sets of blacksmiths' and engineers' tools; fifteen tons railroad iron; ten tons refuse and old iron; two sawing machines; eighteen horses; nine set of harness, and one hundred cords of wood; and that a copy of said mortgage was filed in the office of the clerk of Kings County, about the twenty-third day of November, one thousand eight hundred and thirty-nine.

And the said defendants, further answering, state that they have no knowledge or information sufficient to form a belief, and, therefore, cannot admit or deny, but leave the plaintiff to make such proof as he may be advised, whether at a meeting of Board of Directors of the Morris Canal and Banking Company, held on the twenty-fifth day of June, one thousand eight hundred and forty, the said George B. Fisk was nominated as a director of the last-named Company; or whether at a subsequent meeting of said Board of Directors, held on the twenty-second day of September, in the said year one thousand eight hundred and forty, such proceedings were had, that the said George B. Fisk was informed that he had been elected a director of said last-named Company, or whether the said George B. Fisk accepted of said appointment, or whether, on the fifteenth day of the month of October following, the said George B. Fisk acted in the capacity of such director of said Company, and met with a portion of said directors purporting to act; or whether the said George B. Fisk took upon himself the responsibility of such director, or investigated and became acquainted with the affairs and condition of said Company, or whether the said George B. Fisk continued as such director until the affairs of said Company went into the hands of receivers.

And the said defendants, further answering, state that they have no knowledge or information sufficient to form a belief, and, therefore, cannot admit or deny, but leave the said plaintiff to make such proof as he may be advised, whether on the third day of November, one thousand eight hundred and thirty-nine, the said Morris Canal and Banking Company became largely indebted to the State of Michigan, one of the United States of America, by reason of the connection of said Company with what was called the Five Million Loan of said State, or whether the said Company were unable to pay the same, or long prior to the day last aforesaid, and at all times there-

after, continued to be insolvent, or whether the said State of Michigan through its proper officers and agents knew the same, or whether the said State of Michigan, through its proper officers and agents, made efforts to collect said debt; or whether Robert Stuart, the then treasurer of said State, under and in pursuance of the powers and authority in him vested, visited the office of said Company with a view of securing or attempting to secure said debt, at sundry times, during the year one thousand eight hundred and forty, or whether the said Robert Stuart caused a bill of complaint to be drawn against the said Company, with a view of filing the same in the Court of Chancery of the State of New Jersey, or whether the said Robert Stuart swore to the said bill of complaint on the twenty-third day of October, one thousand eight hundred and forty, before one of the masters of the Court of Chancery of the State of New Jersey.

And the said defendants, further answering, state that they have no knowledge or information sufficient to form a belief, and, therefore, cannot admit or deny the facts and circumstances stated under the oath of Robert Stuart in the said complaint, as stated and set forth in the complaint in this cause from the fifteenth folio, to and including the nineteenth folio in said complaint, but leaves the plaintiff to make such proof thereof as he may be advised.

And the said defendants, further answering, state that they have no knowledge or information to form a belief, and, therefore, cannot admit or deny, but leave the plaintiff to make such proof of the same as he may be advised, whether the statement so made in said bill of complaint were true, or whether the said State of Michigan had full notice of the insolvency of the said The Morris Canal and Banking Company, or that they had suspended payment and their ordinary banking business, or whether the said Company had no lawful right, power, or authority, to make any sale, transfer, or conveyance of any of its property, debts, credits, and effects to the State of Michigan, or whether any conveyance so taken would have been utterly void as contrary to the provisions of the seventh section of an act of the State of New Jersey, passed the sixteenth day of February, one thousand eight hundred and twenty-nine, as stated and set forth in the complaint in the above entitled action.

And the said defendants, further answering, admit that on or about the ninth day of December, in the year one thousand eight hundred and forty, the Morris Canal and Banking Company did enter into an agreement with the State of Michigan under their corporate seal, and signed by their president, by which the said debt due from the said Long Island Railroad Company, secured by the said mortgage, was assigned to the said State of Michigan as collateral security, with the right to have the same permanently, unless the said Morris Canal and Banking Company should redeem the same within six months, as prescribed in the said agreement, which the said Company, as defendants are informed and believe, failed to do. Defendants further

admit that a copy of said agreement is annexed to the bill of complaint and marked A.

And the said defendants, further answering, upon information and belief, state that the last-mentioned agreement was made, executed, and delivered by the proper officers and agents of the Morris Canal and Banking Company, under their corporate seal, at the time it bears date, in the City of New York, at their banking house in the City of New York, in the usual course of their business, with the knowledge and approbation, and by the authority of the directors of said Company.

And the said defendants, further answering, state that they have no knowledge or information to form a belief, and therefore cannot admit or deny whether the said State of Michigan treated the said agreement as a mortgage or otherwise on the assets and property therein mentioned, or whether they caused the said agreement to be recorded in the office of the Register of the City and County of New York, but leave the plaintiff to make such proof thereof as he may be advised. And these defendants are advised that it is not material whether the said agreement was so recorded or not, and the recording thereof as alleged was not notice to any person as to any matter therein contained; and the said defendants therefore charge and assert that the recording of said agreement was not notice of the contents thereof to the said Long Island Railroad Company, and these defendants deny that they had any knowledge or information as to the nature and contents of the said agreement.

And the said defendants, further answering, admit that by a clerical error, "No. nine" in said agreement is called an assignment of a judgment in the Long Island Railroad Company, &c., whereas it was in fact the mortgage hereinbefore referred to.

And the said defendants, further answering, state that they have not any information or knowledge to form a belief, and therefore cannot admit or deny, but leave the plaintiff to make such proof as he may be advised, of all the matters and things, stated and set forth in the said bill of complaint, from the twenty-eighth folio to and including the thirty-sixth folio in said bill.

And the said defendants, further answering, state that they have not any information or belief, and therefore cannot admit or deny, but leave the plaintiff to make such proof as he may be advised, whether on the ninth day of December, one thousand eight hundred and forty, the said Morris Canal and Banking Company were indebted over the sum of five millions of dollars, and had suspended its ordinary business, and had become insolvent, within the meaning of the Act of the State of New Jersey thereinbefore referred to, entitled "An Act to prevent frauds by incorporated companies."

And the said defendants, further answering, state that they have not any knowledge or information sufficient to form a belief, and therefore cannot admit or deny the matters and things stated and set

forth in the said bill of complaint, from the thirty-eighth folio to and including the fortieth folio in said bill, and leave the plaintiff to make such proof thereof as he may be advised.

And the said defendants, further answering, state, that they have not sufficient kuowledge or information to form a belief, and therefore cannot admit or deny, but leave the plaintiff to make such proof thereof as he may be advised, whether on or about the twelfth day of May, in the year one thousand eight hundred and forty-one, Abraham Richards and David Selden, of the City of New York, recovered a judgment in the Supreme Court of the State of New York, against the Morris Canal and Banking Company, for about the sum of thirty-eight thousand six hundred and thirty-one dollars and thirty cents, damages and costs, upon a bond or obligation made by said Company, and which fell due and was protested for non-payment, about the first day of March, one thousand eight hundred and forty; or whether on the seventh day of September, of the same year, the said plaintiff also recovered against the same Company, judgment in the Supreme Court of the State of New Jersey, in pursuance of the laws of said State, for the sum of thirty-nine thousand five hundred and twenty-nine dollars and forty-nine cents; or whether, on the day last mentioned, Henry Yates, Thomas G. Talmadge, and William E. Noyes, recovered a judgment in the last-mentioned court against the said Company, for the sum of eleven thousand two hundred and forty-five dollars and nineteen cents; or whether said last-mentioned judgment was subsequently assigned to the said David Selden; or whether the said Richards and Selden, on the twenty-eighth day of December, one thousand eight hundred and forty-one, recovered in one of the said courts of New Jersey, of competent jurisdiction and authority under the laws of said State, a certain other judgment against the said Morris Canal and Banking Company, for the sum of sixteen thousand seven hundred and twenty-seven dollars and eighty-six cents; or whether about the same time other judgments were recovered in the courts of said State, of like authority and jurisdiction, against said Morris Canal and Banking Company, by other parties, which were subsequently assigned to the said Richards and Selden, or said David Selden; or whether there is now due on said judgments the sum of fifty thousand dollars, or thereabouts.

And the said defendants, further answering, state, that they have not any knowledge or information to form a belief, and therefore cannot admit or deny, but leave the plaintiff to make such proof as he may be advised, whether on the twenty-fourth day of September, one thousand eight hundred and forty-one, a committee from the Board of the Morris Canal and Banking Company, consisting of James B. Murray, Abraham Kinney, and George B. Fisk, were appointed to investigate its said affairs, and make a report thereon, or whether the said committee reported the result of their investigation on the third day of November, one thousand eight hundred and forty-

one, as stated and set forth in said bill of complaint; and said defendants deny that the Morris Canal and Banking Company had for a long time before the recovery of said judgments, been utterly insolvent, and had suspended its ordinary business.

And the said defendants, further answering, state, that they have no knowledge or information to form a belief, and therefore cannot admit or deny, but leave the plaintiff to make such proof thereof as he may be advised, of all the facts and circumstances stated in the said bill of complaint, from the forty-fourth folio to the sixty-third folio in said bill, and the defendants deny all knowledge or notice of the said facts and circumstances.

And the said defendants, further answering, admit, that on or about the seventeenth day of February, one thousand eight hundred and forty-two, the said State of Michigan duly passed an act, entitled An Act to provide for the collection of certain assets transferred to the State, and for other purposes, and that the first section is in the words following, viz.: That the Auditor-General, State Treasurer, and Secretary of State, for the time being, be, and the same are hereby constituted Trustees, in behalf of the State, to take charge of the assets assigned to the State, by the Michigan State Bank, and such other assets and property as may have been or shall hereafter be conveyed to the State in payment of other debts, or become the property of the State, as collateral security, securities or otherwise; and that by the third section of the said Act, it is provided that said Trustees shall have the power to lease, sell, or convey, any assets or property assigned to the State as aforesaid.

And the said defendants, further answering, state, that they have not any knowledge or information to form a belief, and cannot admit or deny, but leave the plaintiff to make such proof thereof as he may be advised, whether on the eighth day of July, in the year one thousand eight hundred and forty-two, the said Long Island Railroad Company, by the said George B. Fisk, its president and active manager, did receive a surrender of the mortgage on the chattels of the said The Long Island Railroad Company, hereinbefore mentioned, from the said State of Michigan, and executed to the said State of Michigan a new mortgage on the same chattels, signed by the said George B. Fisk, as President of the Long Island Railroad Company.

And the said defendants, further answering, state, that they have not sufficient knowledge to form a belief, and therefore cannot admit or deny, but leave the plaintiff to make such proof as he may be advised, when or at what particular time Abraham G. Thompson entered into a negotiation with Charles G. Hammond, then Auditor-General of the State of Michigan, for the purchase of the said mortgage, or what was the form or the nature of the agreement for the said purchase, or what was the opinion or belief of the said Abraham G. Thompson and George B. Fisk, as to the security of the debt secured by said mortgage, and the defendants admit that the said mortgage

was sold at public auction at the Merchants' Exchange, on or about the twenty-fourth day of May, in the year one thousand eight hundred and forty-three, and was purchased by Abraham G. Thompson, for the price or consideration of twenty thousand dollars, and that the said Charles G. Hammond, Auditor-General, John J. Adam, Treasurer, and R. P. Eldridge, Secretary of State, on or about the thirtieth day of May, in the year one thousand eight hundred and forty-three, assigned and conveyed the said mortgage of the Long Island Railroad Company to Abraham G. Thompson, and said mortgage was duly recorded in the office of the clerk of King's County, in Liber 71 of Mortgages, page 91, on the seventh day of June, one thousand eight hundred and forty-three.

And the said defendants, further answering, state, upon information and belief, that said mortgage was advertised for some days in the public newspapers of the city of New York, or some one of them, to be sold at auction at the Merchants' Exchange in the city of New York, on the said twenty-fourth day of May, one thousand eight hundred and forty-three; and that said mortgage was sold at said time and place according to said advertisement, and was purchased at said sale by the said Abraham G. Thompson.

And the defendants, further answering, state, that they have no knowledge or information to form a belief, and therefore cannot admit or deny, but leave the said plaintiff to make such proof as he may be advised, whether Abraham G. Thompson well knew or had been informed when he made the said negotiation with the said trustees of the said State, and when he took a transfer of said debt and the securities therefor, as aforesaid, that the said State of Michigan had become possessed of the said debt so secured by said bond and mortgage, in contravention of the laws of the State of New Jersey, and was an illegal holder of the same, and had no lawful right, power, or authority to transfer the same, and could give no lawful title thereto; or whether the said Abraham G. Thompson bought the said debt and securities on speculation, as alleged in the said bill of complaint.

And the said defendants, further answering, admit, that on or about the fifteenth day of June, in the year one thousand eight hundred and forty-three, they received a surrender of the said mortgage to the State of Michigan, and executed and delivered to the said Abraham G. Thompson, as stated and set forth in said bill of complaint; and that said mortgage was filed in the office of the clerk of Kings County, on or about the fourth day of May, one thousand eight hundred and forty-four; and that said mortgage was renewed of record according to law, on the fifth day of February, one thousand eight hundred and forty-seven; and upon said renewal the memoranda filed in the words and figures as stated in said bill of complaint; and the defendants deny, upon information and belief, that George B. Fisk was interested in said purchase.

And the said defendants, further answering, state, that at the time

of the surrender of the said mortgage to the State of Michigan, the whole principal sum secured thereby, which on the —— day of —— amounted to the sum of forty-three thousand five hundred and fifty-five dollars and thirty cents, was due and payable, and was demanded and required to be paid by the said Abraham G. Thompson.

That after some negotiation between the parties, it was finally agreed that the said The Long Island Railroad Company should execute and deliver to the said Abraham G. Thompson forty bonds, each conditioned to pay to him or bearer the principal sum of one thousand dollars, and interest at the rate of seven per centum per annum, payable semi-annually on the first days of November and May in each and every year, to secure the principal due on said mortgage; and that they should also execute and deliver to said Thompson forty other bonds, each to secure the sum of two hundred and twenty-eight dollars and eighty-eight cents, to secure the amount of arrears of interest due on said mortgage; that all of said bonds should be drawn to Abraham G. Thompson or bearer, in order that they could be more easily negotiated and sold.

That the said Long Island Railroad Company should execute to said Thompson two mortgages, to secure said bonds, upon the real and personal property of said Company.

And defendants, further answering, state, that the said bonds and mortgages were executed in pursuance of said agreement, as by said two mortgages and said bonds in the possession of the said Abraham G. Thompson, or his successors or representatives, will more fully and at large appear.

And the said defendants, further answering, state, that said bonds for the principal sum were numbered consecutively from one to forty, and were made payable as follows, viz.:

From one to ten inclusive, on the first day of May, 1847; from eleven to twenty inclusive, on the first day of May, 1848; from twenty-one to thirty inclusive, on the first day of May, 1849; and from thirty-one to forty inclusive, on the first day of May, 1850.

That the said bonds given for the interest due on said mortgage were in like manner made payable, ten on the first day of May, 1847; ten on the first day of May, 1848; ten on the first day of May, 1849; and ten on the first day of May, 1850.

And the said defendants, further answering, state, that they have paid the said bonds falling due on the first days of May, in the years 1847 and 1848, and the interest on all of said bonds, due on the first day of May, 1848, and that there is now due on said mortgage and the bonds remaining unpaid, the sum of twenty-four thousand five hundred and seventy-seven dollars and sixty cents, and interest thereon, at the rate of seven per centum per annum, from the first day of May, in the year 1848, which said sum the said defendants are ready and willing to pay to whomsoever this Court shall decide is entitled thereto.

And the said defendants further answering, state, that they have no knowledge or information sufficient to form a belief, and therefore cannot admit or deny the matters and things stated and set forth in the said bill of complaint, from the eighty-sixth folio to and including the ninetieth folio in said bill of complaint, and leaving the plaintiff to make such proof thereof as he may be advised.

And the said defendants further answering, upon information and belief, deny that the said plaintiff ever requested the said defendants to account to him for the said debt of the said Long Island Railroad Company for the said sum of forty thousand dollars, and the securities for the payment of the same; and the defendants state, that they had no notice of any title, or claim of title, by or on behalf of the said plaintiff until the commencement of this suit.

And these defendants deny all fraud, combination, and confederacy in said bill of complaint, without that any other matter or thing or things in bill of complaint contained, and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true to their knowledge or belief; all which matters and things these defendants are ready to answer, maintain, and prove, as this honorable Court shall direct, and pray to be hence dismissed with their costs and charges, in this behalf most wrongfully sustained, and that the said defendants be paid and allowed of the amount due on said bonds and mortgage all their costs, counsel fees, and disbursements in this behalf most wrongfully sustained.

WEEKS & DE FOREST,
Attys. for Defts., The L. I. R. R. Co.
JOHN D. WEEKS,
Of Counsel.

New York Superior Court.

Late in Supreme Court in Equity.

JESSE HOYT,
against
ABRAHAM G. THOMPSON, HONORA FISK, Executrix, WILLIAM H. BOLTON, and DAVID B. BAYLIS, Executors of GEORGE B. FISK, THE LONG ISLAND RAILROAD COMPANY, and others.

The joint Answer of Honora Fisk, Executrix, William H. Bolton, and David B. Baylis, Executors of George B. Fisk, three of the defendants to the bill of complaint of Jesse Hoyt, complainant.

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of excep-

tion to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much thereof as these defendants are advised is material for them to make answer unto, they answer and say, that as to all the statements and averments set forth and contained in the said complainant's bill of complaint, from the first to sixth folio thereof, inclusive, these defendants have no knowledge or information, and can neither admit nor deny the same, but leave the complainant to make such proof thereof as he may be advised.

And these defendants further admit, that the Legislature of the State of New York, passed the act to incorporate the Long Island Railroad Company, and the various acts amending the same, which were accepted by the said Company, as is stated and set forth in said bill.

And these defendants further admit, that, for some time, but how long, these defendants do not know and cannot state, the said George B. Fisk, their testator, was President of the said Company and one of the Managers thereof; but these defendants are informed and believe, and therefore state, that the said George B. Fisk, was not the sole manager of the said Railroad Company.

And these defendants admit that the statements and averments contained in the said complainant's bill of complaint, from the ninth to and including the eleventh folio thereof, are true. And these defendants, as to the statements and averments contained in the said complainant's said bill of complaint, from the eleventh to and including the twenty-third folio, these defendants have not any knowledge or information, and, therefore, can neither admit or deny the same, but leave the said complainant to make such proof thereof as he may be advised.

And these defendants, further answering, upon information and belief, deny that the said Robert Stuart, then Treasurer of the State of Michigan, as mentioned and averred in the said complainant's bill, was the authorized agent of the State, and authorized to institute any suit in Chancery against the Morris Canal and Banking Company, for any cause whatever, in the name and behalf of the said State of Michigan, in the year 1840; and also upon like information and belief, these defendants deny that the said Morris Canal and Banking Company was at the time mentioned in the complainant's bill insolvent, or that the said Robert Stuart or the State of Michigan had notice thereof, or that the said Morris Canal and Banking Company had, at the time mentioned in said bill, no lawful right or power to sell or transfer any of its debts, property, or effects, or that the executive officers or agents of the said Morris Canal and Banking Company did assign or agree to assign to the said State of Michigan, without the knowledge, assent, or approbation of the Directors, or a majority or sufficient number of them, according to the usages and regulations of the said Company, the said debt due from the said

Long Island Railroad Company to the said Morris Canal and Banking Company, for forty thousand dollars, mentioned in said bill; but, on the contrary thereof, these defendants state, on their information and belief, that the said agreement as contained in Schedule A., annexed to the said bill between the said Morris Canal and Banking Company and the said State of Michigan, was made, executed, and delivered by the proper officers and agents of said Morris Canal and Banking Company, at the time it bears date, under their common seal, at the city of New York, in the usual course of their business, with the knowledge and approval, and by the authority of the Directors of the said Company, whereby the said Morris Canal and Banking Company transferred the said mortgage of the said Long Island Railroad Company to the said State of Michigan, with the debt secured thereby as collateral security, with the right to have the same permanently, unless the said Morris Canal and Banking Company should redeem the same within six months, as provided in the said agreement, which the said Company, as these defendants are informed and believe, did not do.

And these defendants further answering say, that they have no knowledge, information, or belief, and therefore cannot state, whether the said State of Michigan treated the said agreement as a mortgage or otherwise on the assets and property therein mentioned, or whether they caused the said agreement to be recorded in the office of the Register of the city and county of New York; and these defendants are advised that it is not material whether the said agreement was so recorded or not, and the recording thereof, as alleged, was not notice to any person as to any matter therein contained; and these defendants therefore charge and insist, that the recording of the said agreement was not notice of the matters thereof to the said George B. Fisk; and these defendants, upon their information and belief, deny that said George B. Fisk, the said Abraham G. Thompson, or the Long Island Railroad Company, had any actual notice, knowledge, or information, as to the nature and contents of the said agreement.

And these defendants further answering the said bill, say, that as to all the statements, averments, and charges, in said bill contained, from the twenty-eighth to and including the sixty-sixth folio, these defendants have no knowledge or information (except as to the insolvency of the said Morris Canal and Banking Company, which, upon their information and belief, these defendants deny, as they have before denied), and therefore leave the said complainant to make such proof thereof as he may be advised; but these defendants, upon information and belief, aver that the sale by the State of Michigan, therein mentioned, did pass a valid title to the same debt, and the security therefor to the purchaser thereof; and these defendants, upon information and belief, deny that among the assets and property of the said Morris Canal and Banking Company conveyed to and possessed by the said receiver, mentioned in the bill of complaint,

was the debt due to the said Company by the Long Island Railroad Company, and the securities therefor, or that the said receivers ever possessed any right, title, or interest in the same; and they also deny that the said Long Island Railroad Company, or its President, the said George B. Fisk, knew that the State of Michigan had no legal title to the said debt of the Long Island Railroad Company to the Morris Canal and Banking Company, or that, in fact, the State of Michigan had not a valid title thereto.

And these defendants, further answering upon their information and belief, deny that the said Abraham G. Thompson, in the spring of 1843, or at any other time, in behalf of the said George B. Fisk, or otherwise, entered into negotiations with any officer or agent of the State of Michigan, or that the said Abraham G. Thompson, in behalf of the said Fisk, or otherwise, made any agreement with the State of Michigan, or any agent or officer thereof, as to the time or manner in which the said State of Michigan should sell the said bond and mortgage of the said Long Island Railroad Company to the said Thompson, or any other person; and, upon like information and belief, these defendants deny that the said George B. Fisk or the said Abraham G. Thompson had any knowledge, notice, or information, as to the circumstances or manner in which the said Morris Canal and Banking Company assigned the said bond and mortgage of and the debt against the Long Island Railroad Company to the said State of Michigan.

And these defendants further answering state, upon their information and belief, that the said bond and mortgage of the Long Island Railroad Company was advertised for some days in the public papers of the city of New York, or some or one of them, to be sold at public auction, at the Merchants' Exchange, in the city of New York, on or about the 24th day of May, 1843; and that at the time and place designated in the said advertisement, such sale took place, and that a number of persons were present, and bid for said bond and mortgage, and among others the said Abraham G. Thompson, in behalf of himself and George Griswold, was a bidder, and bid for himself and the said George Griswold upon their joint account, the said Thompson and Griswold being equally interested in such bidding and purchase, became the purchaser of the said bond and mortgage, at such sale, in his (said Thompson's) own name, for the joint and equal benefit of himself and the said George Griswold, for the sum of twenty thousand dollars, that being the highest sum bid for the same at said sale; and thereupon, a few days after, the said State of Michigan, by their proper officers or agents duly authorized, on being paid the said sum of twenty thousand dollars in money, which the said Thompson then and there did pay unto the said State of Michigan, assigned the said bond and mortgage to the said Abraham G. Thompson, for the benefit of himself and the said George Griswold equally, and that the said George B. Fisk had no interest whatever

in the purchase of said bond and mortgage at the time it was made by the said Thompson as aforesaid; and these defendants admit that the said assignment of the said bond and mortgage to the said Thompson is recorded, as is stated and set forth in said bill.

And these defendants further answering the said bill, upon like information and belief, deny that when the said Abraham G. Thompson took the said assignment of said bond and mortgage as aforesaid, he had been informed or knew that the State of Michigan had become possessed of the said bond and mortgage, or the debt secured thereby, in violation of the laws of the State of New Jersey, or was an illegal holder thereof, or that the said State could not transfer the same by a lawful title thereto; but, on the contrary thereof, these defendants are informed and believe that the said Morris Canal and Banking Company, being a corporation created by the laws of the said State of New Jersey, at the time the said bond and mortgage of the Long Island Railroad Company were transferred to the said State of Michigan, had and kept an office and agency for the transaction of its general business, exclusive of its banking business, in the city of New York, where its officers and agents were authorized to make contracts and agreements in relation to its business, and to sell, negotiate, and dispose of its property and assets, for the payment of its debts and liabilities, and where the agreement between the said State of Michigan and the said Morris Canal and Banking Company, attached to the complainant's bill of complaint, was, these defendants are informed and believe, negotiated, and in fact and in good faith, without fraud or collusion, made and performed as far as the said was made and performed.

And these defendants further answering say, that whether or not the said Abraham G. Thompson purchased the said bond and mortgage upon speculation, or whether the said Thompson executed, or the State of Michigan gave him any covenant as to the amount due on said bond and mortgage, these defendants have no knowledge, information, or belief, and these defendants are advised and believe that it is immaterial.

And these defendants further answering, upon their information and belief, admit and state that the said George B. Fisk, in his lifetime, purchased, for a full and valuable consideration by him paid, from the said Abraham G. Thompson, and took a transfer to himself, in his own name, of an interest in the said bond and mortgage of the said Long Island Railroad Company, equal to one-tenth part of the principal and interest thereof and due thereby; and that the said George B. Fisk continued to hold and did hold the same at the time of his decease, and the same is now held by these defendants as his executors. And these defendants, upon like information and belief, deny all fraud or collusion in the transfer of the said bond and mortgages by the Morris Canal and Banking Company to the State of Michigan, or by the State of Michigan to the said Abraham G.

Thompson, or by the said Abraham G. Thompson to the said George B. Fisk; but aver and charge, upon like information and belief, that all the said several assignments and transfers were made bona fide and without fraud, for a full and valuable bona fide consideration, paid at the time, and without notice of any illegality, or of any laws or proceedings in the State of New Jersey or elsewhere, prohibiting the same, and that all of said transfers were made in the city of New York, and in conformity to the laws of the State of New York, by the proper parties and by the proper authorities, and particularly that the transfer and assignment of the said bond and mortgages of the said Long Island Railroad Company, made by the Morris Canal and Banking Company, was made by the authority and with the knowledge and consent of the directors of the said Morris Canal and Banking Company, and that the said directors always afterwards ratified and approved the same.

And these defendants, further answering, say, that as to the statements, allegations, and charges, contained and set forth in the said complainant's bill of complaint, from the seventy-fifth to the eighty-sixth folio thereof, these defendants have no knowledge, information, or belief, and they leave the said complainant to make such proof thereof as he may be advised.

And these defendants, further answering upon their information and belief, deny all the statements, allegations, and averments contained and set forth in the said complainant's bill of complaint, from the eighty-fifth to the ninetieth folios thereof; and upon like information and belief, these defendants deny that the said complainant ever had, or possessed, or derived, or held any right, title, or lawful interest in or to the said bond and mortgage of the said Long Island Railroad Company, or the moneys secured thereby, or any part thereof, from the said receivers of the said Morris Canal and Banking Company, or otherwise; but that if the complainant ever procured any transfers or assignments of any of the assets or property of the said Morris Canal and Banking Company from the said receivers thereof, or any other person representing said Company and its assets and property, the same was procured in fraud of the laws and of the orders and decrees of the Courts of the State of New Jersey having jurisdiction of the matters and affairs of the said Company, and that the same are fraudulent and void.

And these defendants, further answering the said bill upon their information and belief, deny that the said complainant ever requested the said Abraham G. Thompson, George B. Fisk, and the Long Island Railroad Company to account to the said complainant for the said debt of the Long Island Railroad Company for forty thousand dollars, and the interest thereon, formerly due to the Morris Canal and Banking Company, and for the securities and interest thereon, or for the process thereof.

And these defendants deny all fraud, combination, and confederacy

charged in said bill of complaint, without that any other matter or thing in said bill of complaint contained, and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true to their knowledge or belief; all of which matters and things these defendants are ready to aver, maintain, and prove, as this honorable Court shall direct, and pray hence to be dismissed with their costs and charges, in this behalf most wrongfully sustained.

HONORA FISK, Executrix,
WILLIAM H. BOLTON,
DAVID B. BAYLIS, } Executors,
Of GEORGE B. FISK, deceased.

MANN & RODMAN,
Solicitors for Executors of George B. Fisk.

Superior Court.

JESSE HOYT
v.
ABRAHAM G. THOMPSON, HONORA FISK, and others, executors of GEORGE B. FISK, deceased, and THE LONG ISLAND RAILROAD COMPANY, impleaded with others. } Special Term, Sept. 29th, 1854.

Present, Thomas J. Oakley, Esq., Chief Justice.

A motion being made in this action to revive and continue the same as against Henry Shelden, acting executor of Abraham G. Thompson, deceased, and on hearing counsel for the respective parties, and on reading and filing affidavit showing the position of the cause, it is ordered, that this cause stand revived as against said Henry Shelden, acting executor of said Abraham G. Thompson, and that he be impleaded in the place and stead of said Thompson, and this action be continued as against him; and that the same be proceeded in as against the said Henry Shelden, in the same manner as it might as against the said Thompson, if he were still living. And on the motion of Isaac Dayton, of counsel for said Henry Shelden, ordered, that he have thirty days to answer the complaint in this cause, and that the judgment upon the remittitur from the Court of Appeals in the meantime be stayed.

The Superior Court of the City of New York.

Late in Supreme Court in Equity.

The several answers of Henry Shelden, executor of the last will and testament of Abraham G. Thompson, deceased, one of the defendants to the bill of complaint of Jesse Hoyt, complainant.

This defendant now and at all times saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, imperfections, and insufficiencies of the complainant's said bill of complaint, and therein contained, for answer thereunto, or unto so much and such parts thereof as he is advised it is material and important for him that he should make answer unto, answering says, that he admits that on the thirty-first day of December, in the year 1824, the Legislature of the State of New Jersey passed the act to incorporate the Company known as "The Morris Canal and Banking Company," as in the said complainant's bill of complaint is stated and set forth; and that the said The Morris Canal and Banking Company was endowed with the privileges and immunities alleged in the said bill and described in and by the said act of incorporation and the several acts of the said Legislature of the State of New Jersey, copies of which are annexed to the said bill. And as to the statements in the said bill relative to the time the said The Morris Canal and Banking Company commenced the construction of their canal from the Passaic River to the Delaware, the time the same was finished and put in operation, the time the Company commenced the business of banking, the capital upon which they commenced, and the time when and the amount to which the capital was increased, this defendant says he has not any knowledge or information, unless from the said bill in respect thereof, and neither admits nor denies the same, but he is advised that the same are immaterial, and leaves the complainant to such proof thereof as may be proper.

This defendant, further answering, says, that whether at the period mentioned in the said bill, or at any time, the said Company completed their said canal from the City of Newark to the Hudson's River, or whether the whole costs of the said canal was the sum mentioned in the said bill, or whether the gross receipts were the several sums therein stated, whether in the year 1841 the canal yielded little or no revenue, but was undergoing repairs, whether at the time mentioned in the said bill, or at any other time, the said Company leased the said canal as alleged in the said bill for the purpose therein mentioned, or for any other purpose, whether the officers and directors of the said Morris Canal and Banking Company engaged in the business of banking as stated in the said bill, and whether there was due to the said Company on the first day of February, in the year 1837, nearly the sum of five millions of dollars, and whether the same, or a large amount thereof, was wholly lost to the Company, this defendant has not any knowledge or information, excepting such as is given in and by the said bill of complaint, and neither admits nor denies the same; but he is advised that the allegations of the said bill in that behalf are wholly immaterial, and he leaves the said complainant to such proof in respect thereof as may be proper. This defendant, however, denies that by the losses aforesaid the said Company was rendered insolvent in fact, or within the meaning of the act

of the State of New Jersey, passed on the sixteenth day of February, in the year 1829, entitled "An Act to prevent Frauds by Incorporated Companies."

This defendant further answering admits, that on the 24th day of April, in the year 1834, the Legislature of the State of New York passed the "Act to incorporate the Long Island Railroad Company," and he admits the organization of the Long Island Railroad Company and the several acts in relation thereto mentioned in the said bill of complaint. He further admits, that from a period prior to the first day of November, in the year 1839, to some time in the year 1847, George B. Fisk was President of the said The Long Island Railroad Company, but he denies that the said George B. Fisk was the manager of the said Company, active, or otherwise, except the due and proper discharge of his duties as such president.

This defendant further answering admits, that in the course of the lawful dealings between the said The Morris Canal and Banking Company, and the said The Long Island Railroad Company, the said Railroad Company became indebted to the said Canal and Banking Company, in the sum of about sixty thousand dollars, and that to secure the payment thereof, the said Railroad Company, by manner and form as alleged in the said bill of complaint, on the third day of November, in the year 1839, executed and delivered to the said The Morris Canal and Banking Company a mortgage, signed by the said George B. Fisk, as President, of and upon the goods and chattels, locomotive engines, with tenders, passengers, burden or freight and baggage cars, turning tables, cranes, tools, railroad iron, refuse and old iron, sawing machines, horse harness, and wood, mentioned and described in the said bill, and that a copy of the said mortgage was filed in the office of the clerk of the county of Kings, on the twenty-third day of the said month of November, in the year 1839, as alleged in the said bill.

This defendant further answering, says, that he has not any knowledge or information, except as derived from the said bill of complaint, in respect to the allegations of the said bill relative to the nomination and election of the said George B. Fisk, as one of the directors of the Morris Canal and Banking Company, his acceptance of such appointment, his acting in the capacity of such director, his meeting with a portion of the directors of the said Canal and Banking Company, his taking upon himself the responsibility of such director, his investigating and becoming acquainted with the affairs and condition of the said Company, and his continuance as such director, and this defendant neither admits nor denies the said allegations, but he insists that the said allegations, if true, are not material to the purposes of this suit, and he leaves the said complainant to such proof thereof as may be proper.

This defendant further answering, admits, that the said The Morris Canal and Banking Company became largely indebted to the

State of Michigan, but whether the said Company became so indebted prior to the third day of November, in the year 1839, as alleged in the said bill of complaint, or whether such indebtedness arose by reason of the connection of the said Company with the five million loan of the said State, as alleged in the said bill, this defendant has not any knowledge or information except as derived from the said bill, and therefore, he neither admits nor denies the same, but leaves the complainant to such proof thereof as he may be advised may be necessary and proper, but this defendant denies, that the said The Morris Canal and Banking Company was unable to pay the said debt so due to the said State of Michigan, because the said Company had long prior to the said third day of November, in the year 1839, become and at all times thereafter continued to be insolvent. And as to the allegations of the said bill relative to the knowledge on the part of the said State of Michigan, through its proper officers, of the insolvency of the said The Morris Canal and Banking Company, and the efforts of the said State to collect said debt so due from the said The Morris Canal and Banking Company, the visit of Robert Stuart, Esquire, then Treasurer of the State of Michigan, to the office of the said Company, the purposes and times of such visits, the negotiations had by him with the President of the said The Morris Canal and Banking Company, the failure of such negotiations, the preparation and verification of the bill in chancery mentioned in the said bill of complaint, and the contents, statements, allegations, and prayer of the said bill in chancery, this defendant has not any knowledge or information, except as derived from the said bill of complaint, and therefore denies the same, and he claims and insists that the same are irrelevant and wholly immaterial in view of the facts of the case and the objects for which this suit is instituted. He further denies, that the said Robert Stuart was the authorized agent of the State of Michigan, for the purpose of filing the said bill in chancery, or making the statements or charges therein contained, or of instituting any suit whatever in the name of the State of Michigan, against the said The Morris Canal and Banking Company.

This defendant further answering, denies that the statements made in the said bill in chancery were true. He further denies, the allegations of the said bill of complaint, relative to the notice had by the State of Michigan of the insolvency of the said The Morris Canal and Banking Company, and of the other matters whereof it is alleged in the said bill, the said State of Michigan had notice, and as to the allegations of the said bill of complaint relative to the true construction of the seventh section of the Act of the State of New Jersey, of the sixteenth day of February, 1829, "to prevent frauds by incorporated companies," recited in the said bill, this defendant submits that the same are irrelevant and immaterial, and that he is not called upon or required to answer the same.

And as to the allegations of the said bill of complaint relative to

the assignment by the said The Morris Canal and Banking Company to the State of Michigan of the debt due to the said Company from the Long Island Railroad Company, and the mortgage given to secure the same, this defendant denies that the executive officers of the said The Morris Canal and Banking Company were prevailed upon, without the knowledge, assent, or approbation of a majority of the directors of said Canal Company, to agree to assign the said debt due from the said The Long Island Railroad Company to the said Morris Canal and Banking Company, and this defendant avers the facts in respect to the said assignment, to be as follows:

That the said The Morris Canal and Banking Company being indebted as aforesaid, to the State of Michigan, and there being due to the said The Morris Canal and Banking Company from the Long Island Railroad Company, on account of the aforementioned indebtedness of the said Railroad Company to the said Canal and Banking Company and on the mortgage security aforesaid, the sum of about forty thousand dollars, the said The Morris Canal and Banking Company acting by its president and cashier thereunto duly authorized, with the knowledge, approbation, and concurrence, and by the direction of a majority of the directors of the said Company, at the request of the treasurer of the State of Michigan, for that purpose the duly authorized agent of the said State, agreed to assign and transfer to the said State of Michigan for a good, valuable, and sufficient consideration as security in part for the payment of the aforesaid indebtedness of the said Company to the said State, the aforesaid debt due to the said The Morris Canal and Banking Company from the Long Island Railroad Company, and the mortgage security aforesaid, given to secure the said debt; and thereupon the said The Morris Canal and Banking Company having and having long had an office and place of business in the city of New York, at which by far the largest portion of the business of the said Company other than banking business, had been and was transacted in the usual manner of carrying on and transacting mercantile business in the city of New York, on or about the ninth day of December, in the year one thousand eight hundred and forty, at the city of New York, and not within the territory or jurisdiction of the laws of the State of New Jersey, and in the ordinary and usual manner of conducting mercantile business, and assigning or transferring securities in the city of New York, by incorporated companies, and in the usual manner in which the said The Morris Canal and Banking Company conducted such business, the said The Morris Canal and Banking Company acting by the president and cashier thereof, thereunto duly authorized, with the knowledge, approbation, and concurrence, and by the direction and under the authority of the Board of Directors of the said Company, executed and delivered to the State of Michigan, for a valuable and sufficient consideration, the agreement or assignment mentioned in the said bill of complaint, bearing date the ninth day of December, in

the year 1840, of which a copy is annexed to the said bill, marked Schedule A., which said agreement was, on the part of the said The Morris Canal and Banking Company, signed by the president and cashier thereof, and to which the common seal of the said Company was affixed by the said president and cashier, acting within the scope of the legitimate business of the Company, and within the general scope of their authority, by the concurrence, direction, and authority of the Board of Directors of the said Company, in accordance with the usages of the said Company, and without any notice to the said State of Michigan, or knowledge or information on the part of the said State of the provisions of the statute of the State of New Jersey, to prevent frauds by incorporated companies. And this defendant denies, that Robert Stuart, mentioned in the said bill of complaint as the authorized agent of the State of Michigan, had, at the time of the execution and delivery of the said agreement or assignment, knowledge of the insolvency, utter, or otherwise, of the Morris Canal and Banking Company, or that the said Company had no lawful right, power, or authority to sell, convey, assign, or transfer any of its property, debts, credits, or effects. And this defendant claims and insists, that upon the execution by the said The Morris Canal and Banking Company of the said agreement or assignment in manner aforesaid, and by virtue thereof, the State of Michigan became the actual legal holders and owners of the aforesaid debt so due as aforesaid, from the Long Island Railroad Company to the said The Morris Canal and Banking Company, and of the mortgage given as security therefor as aforesaid, subject only to the provisions, terms, and conditions of the said agreement or assignment, and not in any way subject to the forfeiture, penalties, or provisions of the statute of the State of New Jersey, "to prevent frauds by incorporated companies," or any other act of the Legislature of the State of New Jersey, whatsoever.

This defendant further answering, says, that whether the State of Michigan treated the said agreement as a mortgage or caused the same to be recorded as alleged by the said complainant in his said bill, this defendant has no knowledge or information, except the statements to that effect in the said bill, and neither admits nor denies the same, but leaves the complainant to his proof thereof, if such proof shall be deemed material and proper; but this defendant denies that the recording of the said agreement, if the same was recorded as alleged in the said bill, was notice to all persons and parties of the nature and contents of the said agreement, and that the said Abraham G. Thompson and the said George B. Fisk had actual personal knowledge, information, or notice of the said agreement and of its nature and contents, or that the said The Long Island Railroad Company had such knowledge, information, or notice, except as the same may have been derived from the subsequent transactions between the parties in respect to the aforesaid debt and mortgage security.

This defendant further answering, denies such and every, the several allegations of the said bill of complaint relative to the operation and effect of the said agreement and the interest or title acquired or passed under or by virtue of the same. He further submits and respectfully insists, that it is immaterial whether or not the said The Morris Canal and Banking Company or the receivers thereof, had knowledge or notice of the intended sale of the said debt against the Long Island Railroad Company or the security therefor by the said State of Michigan as alleged in the said bill of complaint.

This defendant further answering, admits the clerical error in the said agreement mentioned in the said bill.

This defendant further answering, denies that the assent of the said The Morris Canal and Banking Company or the persons properly vested with the same, was never given or in any way obtained to the aforesaid disposition and transfer of the said debt due as aforesaid to the said Company from the Long Island Railroad Company, and the mortgage security thereof aforesaid; on the contrary thereof, this defendant alleges and insists, that the said The Morris Canal and Banking Company, by its duly authorized officers and agents, acting within the scope of the legitimate business of the Company and of their own authority as agents of the Company, expressly assented to the aforesaid disposition and assignment of the said debt and security, and legally signified such assent by the execution and delivery of the said agreement and assignment in manner and form as herinabove particularly described and set forth; and this defendant denies, that the State of Michigan held no right, claim, or title to the said debt and security; on the contrary thereof, he claims and insists, that the title of the State of Michigan to the said debt and security by virtue of the aforesaid agreement or assignment was valid and effectual in equity and in law, and sufficient for all purposes to enable the State of Michigan in pursuance of the provision of the said agreement or assignment to transfer and convey a valid and effectual title to the said debt so due as aforesaid, from the Long Island Railroad Company unincumbered of any rights or claims of the said The Morris Canal and Banking Company to the creditors thereof, or of any person or persons who might thereafter by any pretended operation of the laws of the State of New Jersey, claim to have become vested with the same.

This defendant further answering, submits and respectfully insists, that the allegations of the said bill of complaint relative to the act of the Legislature of the State of Michigan, in relation to the five million loan, the report of Robert Stuart to the Governor of the said State, the communication of the said report by the Governor to the Legislature of the State, and the printing and publication of the same, are immaterial and irrelevant to the purposes of this suit, and that this defendant ought not to be required to answer the same, and he claims that the printing and publication of the said report as

alleged in the said bill of complaint were notice of the fact and circumstances as claimed and charged in the said bill.

This defendant further answering, denies that on the ninth day of December, in the year 1840, The Morris Canal and Banking Company had suspended its ordinary business and had become insolvent in point of fact, and also, within the meaning of the act of the State of New Jersey, "to prevent frauds by incorporated companies," as in the said bill of complaint is alleged.

This defendant further answering, admits that on or about the sixth day of March, in the year 1841, the officers of the said The Morris Canal and Banking Company obtained from the said The Long Island Railroad Company, as additional security for the said debt, the additional mortgage of and upon the lands of the said Railroad Company, in the counties of Queens and Suffolk, and the other property of the said Railroad Company mentioned and described in the said bill of complaint, and that the said last-mentioned mortgage was on the twenty-sixth day of April, in the year 1841, assigned to the State of Michigan as a further security for the said debt so due as aforesaid, from the said The Morris Canal and Banking Company to the said State of Michigan, and that the said mortgage and the said assignment thereof were duly recorded in the office of the clerk of the county of Kings, as in the said bill of complaint is alleged. But this defendant denies, that the said last-mentioned mortgage was assigned to the State of Michigan, by the officers of The Morris Canal and Banking Company without the authority of the Directors thereof; on the contrary, this defendant alleges, that the said last-mentioned assignment was made and executed on or about the sixth day of March, in the year one thousand eight hundred and forty-one, at the city of New York, and not within the limits or jurisdiction of the State of New Jersey, by the said The Morris Canal and Banking Company, acting by its president and cashier thereunto duly authorized within the scope of the legitimate business of the said Company and within the scope of their own authority, with the knowledge, assent, and concurrence, and by the direction of the Board of Directors of the said Canal and Banking Company for a valuable and sufficient consideration and in accordance with the laws of the State of New York, and in the ordinary and usual manner of conducting mercantile business and assigning or transferring securities in the city of New York, by incorporated companies and in the usual manner in which the said The Morris Canal and Banking Company conducted such business, and without any notice to the said State of Michigan, or knowledge or information on the part of the said State of the provisions of the Statute of the State of New Jersey, to prevent frauds by incorporated companies, which said assignment was signed by the president and cashier of the said The Morris Canal and Banking Company respectively, and to which said assignment the said president and cashier affixed the common seal of the said Com-

pany by the assent and direction of the Board of Directors of the said The Morris Canal and Banking Company, in accordance with the usages of the said Company; and this defendant claims and insists, that upon the execution by the said The Morris Canal and Banking Company of the said last-mentioned assignment, in manner and form as above described, and by virtue thereof, the State of Michigan became the actual, legal holders and owners of the said last-mentioned mortgage, so as aforesaid made and executed by the Long Island Railroad Company to the said The Morris Canal and Banking Company without liability to any of the penalties, forfeitures or provisions of the statute of the State of New Jersey to prevent frauds by incorporated companies mentioned in the said bill of complaint, or to any other law or statute of the State of New Jersey, whatsoever.

This defendant, further answering, says, that he has not any knowledge or information, except as derived from the said bill of complaint, whether the several judgments mentioned in the said bill of complaint, or any or either of them, were recovered against the said The Morris Canal and Banking Company, and therefore neither admits nor denies the statements to that effect in the said bill, and leaves the complainant to such proof thereof as may be deemed proper. But he denies, that the said The Morris Canal and Banking Company had for a long time or for any time before the alleged recovery of the said alleged judgments become insolvent and had suspended its ordinary business, and he submits that the statements of the said bill of complaint as to the appointment of a committee of the Board of Directors, of the said The Morris Canal and Banking Company, to investigate its affairs, and the proceedings and report of the said committee, are irrelevant and immaterial, and that this defendant is not required to answer the same.

This defendant further answering, says, that he has not any knowledge or information, except as derived from the said bill of complaint, whether Abraham Richards and David Shelden, named in the said bill, filed the bill in chancery against the said The Morris Canal and Banking Company, mentioned in the said bill of complaint, or whether the proceedings mentioned in the said bill were had in the said suit, or whether the decree recited in the said bill was entered in the said suit, or whether the persons named in the said decree were appointed receivers of the goods, chattels, credits, effects, and property of the Morris Canal and Banking Company, as therein stated, and therefore neither admits nor denies the statements in respect thereto in the said bill of complaint, but leaves the complainant to his proof thereof as he may be advised; but this defendant denies that the said alleged decree in any way affected the aforesaid assignment by the Morris Canal and Banking Company to the State of Michigan of the debt aforesaid, so as aforesaid due by the said The Long Island Railroad Company to the said The Morris Canal and Banking Company, and the mortgage security aforesaid thereof, on

the said assignment by the said The Morris Canal and Banking Company to the said State of Michigan, of the said additional mortgage so as aforesaid given by the said The Long Island Railroad Company to the said The Morris Canal and Banking Company, as additional security for the said debt, and he denies that among the effects, rights of action and assets so conveyed to and possessed by the said receivers, was the said debt due the said The Morris Canal and Banking Company by the said The Long Island Railroad Company, and the said security for the same.

This defendant, further answering, says, that he has not any knowledge of the change and substitution of a receiver alleged in the said bill, and leaves the said complainant to such proof thereof as may be proper; but he denies that among the property with which the said receivers became vested was the aforesaid debt due by the said The Long Island Railroad Company, and the security therefor.

This defendant, further answering, denies, that the operation of the said decree arrested and suspended the rights of any and all persons from transferring the said debt so due as aforesaid, by the said The Long Island Railroad Company from transferring the same, either because the assent of the said The Morris Canal and Banking Company to transfer the same had never been obtained, or for any other reason; and he denies that any assignee or purchaser of the said debt subsequent to the appointment of the said receivers, could not become a bona fide purchaser thereof, even without notice of the transaction in the said bill referred to.

This defendant, further answering, denies that the said receivers of the Morris Canal and Banking Company had no notice of the intention of the State of Michigan to dispose of the debt and mortgage aforesaid, so due and given by the said The Long Island Railroad Company to the said The Morris Canal and Banking Company, or of any action on the part of the said State, to foreclose the equity of redemption of the said Canal and Banking Company therein; on the contrary this defendant states the fact to be that the said receivers were duly notified of the intention of the said State of Michigan to dispose of the said debt and mortgages, and of all action of the said State to foreclose the equity of redemption aforesaid.

This defendant, further answering, admits the passing of the Act of the seventeenth day of February, 1842, by the Legislature of the State of Michigan, alleged in the said bill of complaint. He further admits that on or about the eighth day of July, in the year 1842, The Long Island Railroad Company received a surrender of the mortgage on the chattels of the said Railroad Company hereinabove, and in the said bill of complaint mentioned, from the State of Michigan, and executed to the said State a new mortgage on the same chattels included in the said mortgage of the third day of November, 1839, which said two latter mortgages were signed by George B. Fisk, as president of the said The Long Island Railroad Company, by order

of the Board of Directors thereof; but this defendant denies that the said The Long Island Railroad Company, or the said George B. Fisk, the president of the said Railroad Company, knew that the State of Michigan had no legal title to or lawful authority to contract the said debt due as aforesaid by the said Railroad Company, or that the said George B. Fisk knew that the said State of Michigan had no right to receive the said mortgage, or that the said mortgage or the debt secured thereby, belonged to the receivers aforesaid of the said The Morris Canal and Banking Company.

This defendant further answering, denies that previously to or at the time the said Abraham G. Thompson purchased of the State of Michigan the aforesaid debt due by the Long Island Railroad Company, and the mortgage security thereof, the said Abraham G. Thompson knew the circumstances alleged to have been known by him in and by the said bill, and he denies the negotiation and agreement in respect to the sale of the said debt and securities by the State of Michigan, alleged in the said bill, but he admits that on or about the twenty-fourth day of May, in the year one thousand eight hundred and forty-three, the State of Michigan caused the said debt and securities to be sold at public auction in the city of New York, and that on such sale the said debt and securities were struck off for the sum of twenty thousand dollars, and that the said Abraham G. Thompson became the purchaser thereof for that sum; and that on or about the thirtieth day of May, in the said year 1843, the said State of Michigan, by its agents for that purpose duly authorized, conveyed the said debt against the said The Long Island Railroad Company, and the mortgage security thereof aforesaid, to the said Abraham G. Thompson, in consideration of the said sum of twenty thousand dollars, which said conveyance or assignment was recorded as in the said bill alleged. And this defendant avers and states the facts in respect to the said sale to be, that for a reasonable and proper period previous thereto, the said State of Michigan caused notice thereof, specifying the time and place of the said sale, to be published in several public newspapers, and to be given to the directors, receivers, or other authorized agents of the said The Morris Canal and Banking Company; and that pursuant to such notice, and without any arrangement or agreement between the said Abraham G. Thompson and the said State of Michigan, or the agents or officers of the said State, the said sale took place on the said twenty-fourth day of May, in the year 1843, the day specified in the said notice, at public auction, at the Merchants' Exchange, in the City of New York, the place of sale in the said notice specified. That the said sale was fairly conducted, that a large number of persons were present at the said sale, that there were several bids for the said debt and securities, and that on such sale the said debt and securities were struck off for the sum of twenty thousand dollars, that being the highest bid for the same, and that said debt and securities were thereupon

assigned by the State of Michigan to the said Abraham G. Thompson as above stated and set forth, and not otherwise.

This defendant, further answering, denies that the said Abraham G. Thompson previously to, or at the time he purchased the said debt and securities as aforesaid, knew or had been informed of the matters of which it is alleged in the said bill of complaint he knew or had been informed, or that he had any means or opportunity of knowing or becoming informed of such matters, and whether or not the said Abraham G. Thompson purchased the said debt and securities upon speculation, this defendant claims and insists, that he made the said purchase in good faith, for the consideration above expressed, actually paid; and that upon and after such purchase he became and was the actual *bona fide* holder and owner of the said debt so due as aforesaid by the Long Island Railroad Company, and of the mortgages given to secure the same, without liability to any claims of the receivers aforesaid of the Morris Canal and Banking Company, or to the claims of other persons by or under the law of the State of New Jersey to prevent frauds by incorporated companies, only, or under any other statute of the said State.

This defendant, further answering, admits the change of securities and the execution of the mortgage on the fifteenth day of June, in the year 1843, by the said The Long Island Railroad Company to the said Abraham G. Thompson, alleged in the said bill, and filing of the same and the memorandums thereon, as therein alleged. But this defendant denies that the said Abraham G. Thompson knew that he had no legal title thereto, or that he took the said new mortgage with a view of defrauding the *bona fide* creditors of the Morris Canal and Banking Company. And this defendant avers, that in fact he, the said Abraham G. Thompson, had a perfect legal title to the said debt and securities, and had not any reason to believe or suspect otherwise. This defendant further admits the execution by the said The Long Island Railroad Company to the said Abraham G. Thompson of the additional mortgage alleged in the said bill of the sixth day of December, in the year 1845, and the filing of the same as therein alleged. He further admits that the said Abraham G. Thompson received from the said The Long Island Railroad Company the bonds mentioned in the said bill; whether the payments of principal and interest alleged in the said bill have been made, this defendant has not any knowledge or information, and therefore denies the same.

This defendant, further answering, says, that he has not any knowledge or information relative to the purchase by the said complainant of the judgments mentioned in the said bill of complaint, or the other transactions in relation thereto stated in the said bill, or whether the receivers aforesaid of the said The Morris Canal and Banking Company, by order of the Court of Chancery in the State of New Jersey, or otherwise, assigned, on or about the thirteenth day of November, in the year 1845, to Skeffington Sanxay, mentioned in the said bill,

the said debt due by the Long Island Railroad Company, or whether the said Skeffington Sanxay subsequently assigned the same to the said complainant, and therefore he neither admits nor denies the statements in respect thereto in the said bill, but leaves the complainant to such proof thereof as may be equitable and proper. This defendant, however, avers and insists, that at the time of the said alleged assignment of the debt and securities, the same were not in the possession of the said receivers of the said The Morris Canal and Banking Company, but were in the possession of the said Abraham G. Thompson, under a valid title, to the exclusion of the said receivers, and that for that reason the said assignment, if such assignment took place, was illegal and void, and that the said debt and securities, having previously to the commencement of the suit in the Court of Chancery of the State of New Jersey, in which the said receivers were appointed, been assigned by the said The Morris Canal and Banking Company, and having been, at the time of the said alleged assignment by the said receivers, held adversely to the claim of the said receivers by the said Abraham G. Thompson, as assignee thereof, the said receivers had not the legal right, power, or authority to assign the same.

And this defendant, further answering, denies all and all manner of combination and confederacy in the said bill of complaint charged without, that any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready to aver, maintain, and prove, as this honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

Dated, New York, the 30th day of December, in the year 1854.

HENRY SHELDEN,
Executor, &c., of A. G. Thompson, deceased.
ISAAC DAYTON,
Sol'r and Att'y for defendant, Henry Shelden, Executor, &c., of Abraham G. Thompson, deceased.
A. L. JORDAN, *Of Counsel.*

New York Superior Court.

JESSE HOYT
v.
HENRY SHELDEN, Executor of, &c., of ABRAHAM G. THOMPSON, deceased, impleaded with others.

The several supplemental answers of Henry Shelden, executor of

the last will and testament of Abraham G. Thompson, deceased, one of the defendants to the complaint of Jesse Hoyt, complainant.

This defendant, in this his supplemental answer to the plaintiff's said complaint in this action, by leave of the Court, here for this purpose granted, by an order of the General Term thereof, granted on the 13th day of December, A. D. 1856, says, that he put in his original answer to said complaint in due form of law, on or about the thirtieth day of December, eighteen hundred and fifty-four (being then ignorant of the supplemental matter hereinafter set forth), and served a copy thereof on the plaintiff's attorney; to which said original answer on file in the office of the clerk of this Court, he prays leave to refer for the substance and contents thereof, and now for supplemental answer thereto, he says, that just previous to and in contemplation of the sale of the debt, with the securities thereof, originally due by the Long Island Railroad Company to the Morris Canal and Banking Company, and by the latter assigned to the State of Michigan, and caused to be sold by said State of Michigan at public auction in the city of New York, as mentioned in said original answer, at folio 56; he, the said Abraham G. Thompson, and one George Griswold came to an agreement and understanding between themselves to become the joint purchasers of the said debt and securities, in case the same should be struck off at or below a certain sum by them named or agreed on, and that the said Abraham G. Thompson should do the bidding at such sale for them jointly, and for their joint interest and benefit, and that upon such sale the said Abraham G. Thompson did so bid accordingly, and that said debt and securities were struck off to him as such bidder for the sum of twenty thousand dollars; that being the sum or below the sum by them, the said Abraham G. Thompson and George Griswold as aforesaid, named or agreed on, and that being the highest sum bid for said debt and securities at said public auction. And this defendant says that by said sale the said Abraham G. Thompson and George Griswold became and were the joint purchasers and owners of said debt and securities, at and for the said price and sum of twenty thousand dollars, and that on or about the 30th day of May, A. D. 1843, the said State of Michigan by its agents, for that purpose duly authorized, conveyed the said debt against the Long Island Company, and the aforesaid securities thereof, to the said Abraham G. Thompson for himself and the said Griswold, pursuant to said sale, in consideration of the said sum of twenty thousand dollars, which was actually and in good faith paid therefor by said Abraham G. Thompson and George Griswold. And this defendant says, that the change of the securities and the execution of the mortgage on the 15th day of June, A. D. 1843, by the Long Island Railroad Company to the said Abraham G. Thompson, stated in the said original answer at folio 63, were done for and enured to the joint interest and benefit of the said Abraham G. Thompson and George Griswold, and that the legal

title to the said debt and securities in the said Abraham G. Thompson, as mentioned in the said original answer at folio 64, was held by him for his own benefit and interest, for the benefit of the said George Griswold for their joint interest; and further, that the bonds received from the Long Island Railroad Company by the said Abraham G. Thompson, as mentioned in the said original answer, in the latter part of folio 64, were executed to and received by him, the said Abraham G. Thompson, for the joint interest and benefit as aforesaid of himself and the said George Griswold.

And this defendant for further supplemental answer says, that after the sale at public auction of the said debt and securities, and the purchase thereof by the said Abraham G. Thompson for the joint interest and benefit of himself and the said George Griswold; and after the said Abraham G. Thompson and George Griswold became and were the joint owners of the said debt and securities as hereinbefore stated and set forth, and after the said George Griswold had taken the possession of and converted his said joint right, title, and interest in the said debt and securities to his own use; and after the said Abraham G. Thompson and George Griswold had become and were jointly liable to the said plaintiff, Jesse Hoyt, for the amount of said debt and securities, if either of them ever were or had been so liable (but which liability this defendant, upon the advice of his counsel and his own belief, expressly denies), he, the said plaintiff, for and in consideration of the sum of fifteen thousand dollars, to him in hand paid by the said George Griswold, by deed executed to the said George Griswold, under his hand and seal, bearing date on the 17th day of November, A. D. 1853, did remise, release, and forever discharge the said George Griswold, among other things, from all actions and causes of action, claims and demands in law and equity, for or on account of the aforesaid debt and securities against the Long Island Railroad Company, and did also, by said deed, remise, release, and forever discharge the said George Griswold of and from all actions and causes of action, claims and demands in law and in equity, for or on account of any and all sales, conveyances, assignments, and transfers of the estate, effects, choses in action, goods, chattels, rights or credits, lands or tenements, of the said Morris Canal and Banking Company, which were made to the said George Griswold in contemplation of the insolvency of the said Company, or after its actual insolvency, or after it had suspended its ordinary business for want of funds to carry on the same, among which last-mentioned estate, effects, choses in action, rights and credits of said Morris Canal and Banking Company, were included the aforesaid debt and securities against the Long Island Railroad Company. And this defendant is advised and humbly insists, that by the legal operation and effect of said deed of release and discharge from the said plaintiff to the said George Griswold, he, the said Abraham G. Thompson, in his lifetime was, and this defendant as his executor

since his death became and is, legally released and discharged from any and all liability to the said plaintiff, for or on account of said debt and securities against the Long Island Railroad Company, if any such liability ever existed, which, under the advice of his counsel, and on his own belief as aforesaid, he denies ever did exist; and he prays, as in his said original answer he prayed, to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

CHARLES S. JORDEN,
Attorney for the Defendant Shelden.

City and County of New York, ss.

Henry Shelden, executor, &c., of Abraham G. Thompson, deceased, the above named defendant, being duly sworn, says, that the foregoing supplemental answer is true of his own knowledge, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

HENRY SHELDEN.

Sworn to before me this 17th day of December, 1856.

WM. SINCLAIR,
Commissioner of Deeds.

And now, at this day, that is to say, on the 7th day of February, A. D. 1857, the issues so as aforesaid joined, came on to be tried at a special term of the Superior Court, held at the City Hall, in the city of New York, before the Honorable Murray Hoffman, one of the justices of the said court then holding said special term, in due form of law; and thereupon the said justice, upon the pleadings and proofs of the respective parties, did afterwards, to wit, on the 9th day of said February, 1857, render his decision thereupon in writing, as follows, that is to say:

Superior Court.

JESSE HOYT
against
HENRY SHELDEN, Executor, &c., of ABRAHAM G. THOMPSON, deceased, impleaded with others.

"I decide in this cause,—

"1. That the plaintiff is entitled to recover from the defendant, Henry Shelden, the executor of the estate of Abraham G. Thompson, deceased, the amount of the bonds of the Long Island Railroad Company, which has been paid by such Company to the said Thompson, in his lifetime, or to his said executor since; and also, the amount so paid upon the twenty other bonds of such Company for $228 88 each, with lawful interest.

"2. That in case the said sum of money, so as above to be paid by the executors of the said Abraham G. Thompson, shall not be recovered out of his estate, then that the defendants, The Long Island Railroad Company, do pay and discharge the same, with lawful interest, or such part of the same as shall not be paid by or out of the estate of the said Thompson.

"3. That the mortgages given to the said Abraham G. Thompson to secure the aforesaid bonds, amounting in all to forty thousand dollars, and all right, title, and interest therein, belong to and equitably vest in the said plaintiff, and that he is entitled to an assignment and delivery of the same.

"4. That the said Henry Shelden, executor, as aforesaid, do deliver unto the said plaintiff, twenty bonds of one thousand dollars each, made by such Railroad Company, to said Thompson or bearer, dated the 1st of May, 1843, ten of which were made payable the 1st of May, 1849, the other ten the 1st of May, 1850, with the coupons thereto attached for interest, and also twenty other bonds of such Company, for $228 88 each, dated the said 1st of May, 1843, and payable with interest, and in default of such delivery that he pay the amount thereupon, out of the assets of such estate.

"5. That the whole amount of the bonds last mentioned, having become due and payable, the said plaintiff is entitled to a judgment against the said, The Long Island Railroad Company, for the amount thereof, with lawful interest.

"6. That the plaintiff recover his costs against the estate of the said Abraham G. Thompson, and that all the other parties to this suit bear their own costs respectively.

"MURRAY HOFFMAN."

(Indorsed) Decision February 9th, 1857.

HOFFMAN, J.

Filed February 9th, 1857.

Superior Court.

JESSE HOYT
agt.
HENRY SHELDEN.

City and County of New York, ss.

Skeffington Sanxay, attorney for plaintiff, being duly sworn, says, that according to his best knowledge and belief, the several disbursements charged in the annexed bill of cost, have been actually and necessarily paid or incurred, that the copies and exemplifications of documents charged therein, were actually and necessarily used or obtained for use; that such bill of costs contains no charge for any draft engrossment, or copy of any pleading or other proceeding which has not been made, or for any other service which has not been performed, except such prospective services as are allowed by

law, or by the practice of the Court to be taxed, and that the number of folios contained in the draft, or in the copies of any pleading or proceeding, are not overcharged in such bill, as he verily believes.

Deponent further saith, that the witnesses for whose attendance charges are made in said bill, were necessary and material witnesses, as he believes, and that they attended before the referee as therein charged, as he verily believes.

He further saith, that to his best knowledge and belief, none of the said charges or disbursements in said bill were paid upon the bill of costs on the demurrer, the same were not allowed in said bill upon the demurrer, but were stricken out as not chargeable thereupon.

S. SANXAY.

Sworn before me,
March 5th, 1857.
MURRAY HOFFMAN.

New York Superior Court.

JESSE HOYT
agt.
HENRY SHELDEN, and others.

1847.

Dec. 4,	Suit commenced in Supreme Court in Equity.	
	Retaining Fee Solicitor and counsel, . . .	$8 00
	Drawing Bill of Complaint, fol. 94 at 23c. 3632, .	26 32
	Copy exhibits to annex, fol. 273 at 7c., . . .	19 11
	Counsel perusing and amending complaint, . .	2 56
	Abreviating Bill, fol. 94 at 3c., ...	2 82
	Copy, bill and exhibits to keep fol. 367 at 7c., .	15 69
	Engrossing bill to file, fol. 94 at 14c., . . .	13 16
	Copy exhibits to annex, fol. 273 at 7c., . . .	19 11
	Clerk filing bill, ...	0 04
	Drawing subpœna, eng. and seal, fol. 2, . .	0 92
	Copy to serve on defendant, ...	0 14
Dec. 4.	Serving same, ...	0 75
	Dr. affit. same fol. 2 eng. and oath 95½ copy sub. to annex 14c., ...	1 10½
	Dr. order that deft. answer, fol. 1, 28 clerk, ent'g 8, solicitor atte'g 50, ...	0 86
	Notice order and serving with bill, . . .	0 37½
14.	Received notice appearance, ...	0 00
	Copy bill and exhibits for defendant's solr., fol. 367 at 7c., ...	25 67
	Dr. affit. service bill, eng. and oath, . . .	0 90½
1848.		
Jan. 22.	Received demurrer to bill, ...	147 49½

The demurrer was argued at Special Term before Judge HURLBUT, who overruled the same, Jan. 6, 1849; an order for rehearing was made at General Term, March 5, 1849. The cause was by order of General Term, November 7, 1849, transferred to this court, and on the 7th December, 1849, the General Term of this court reversed the order of Judge Hurlbut, and allowed the demurrer, on the 8th day of May, 1850. Plaintiff appealed to the Court of Appeals from this decision, and on the 25th day of October, 1851, the judgment of this court was reversed, and judgment upon the demurrer ordered for plaintiff, with costs of the appeal from Special to General Term of Supreme Court. Such costs were adjusted and paid.

The Costs in the Court of Appeals are—

Fee before argument,			$25 00
Term fees cause on calendar and not reached, June, 1850, October, 1850, January, 1851, March, 1851, June 1851,			50 00
1851			
June 21. Cause argued, argument fee			50 00
Disbursements,			0 00
Oaths to service notice argument Five Terms,	$0 62½		
Disallowed all. Acknowledgment undertaking and certificate,	87½		
Paid for opinion, Gen. Term, to annex to case,	7 60		
Paid clerk fee for return to Court of Appeals,	42 86		
Postage on return, notices of issue, remittitur, &c.,	1 80		
Fees of the Clerk of the Court of Appeals,	4 40		
Printing case and points for Court of Appeals,	96 00		
		154 10	
Nov. 1, Motion for judgment upon the remittitur,			10 00
Deft. Thompson died.			
1854.			
Sept. 21, Drawing petition for motion to revive suit, fol. 4, and eng. and oath,			1 80½
Counsel perusing and amending,			2 50
Copy to keep 28, three copies to serve 84,			1 12
Notice of motion for 28th of Sept. and services on three parties, with petition,			1 12½
Dr. Afft. service, fol. 2, eng. and oath,			96½
Copy petition and notice motion to annex,			42
Solr. and counsel fee, and brief on motion,			5 00

Copy complaint and exhibits for Court on motion, . $39 20
Dr. Order granting motion, fol. 3, and eng. . . 84
Copy for deft's Solr. 21, Solr. attending to enter, 50, 71
Clerk entg. 24, cert. copy 18, three copies to serve, 63, ... 1 05
Serving copies on three parties, and notices, 37½ each, ... 1 12½

A new attorney, Isaac Dayton, Esq., appeared for Executor, and requested copy complaint and the former proceedings in the cause and remittitur.

Copy same, fol. 918, at 7c., ... 64 26
Serving same and notice, ... 37½
Dr. afft. service fol. 2, eng. and oath, ... 96½

1854.
Dec. 30. Received copy answer.
1855.
Feb. Term, notice trial, 37½ Dr. afft. service, fol. 2, eng. and oath 96½, and copy notice, 14, . . . 1 47½
Note of issue for clerk and service, . . . 37½
Solicitor and Counsel fee, ... 2 50
March Term, same costs, ... 4 35
Dr. and eng. consent for order of reference to A. Underhill to take testimony, fol. 2, . . . 42
Drawing order fol. 2, 56, clerk entg. 16, cert. copy, 10, ... 82
Attending to enter 50, copy to serve on referee and deft. 28, ... 78
Serving notice on deft's atty. and referee, . . 75
Summons for deft. for May 17, and service, . . 37½
Dr. Afft., service, fol. 2, eng. and oath, . . 96½
May 17, Dr. Sub. for witness Foot, fol. 3, and eng., . 1 26
Dr. Ticket, fol. 2, 56, copy to serve, 14, serving sub. 12½, ... 82½
Solr. attending, $1, witness fee, 50, . . . 1 50
Dr. Sub. for witness Hoyt, fol. 3, and eng., . . 1 26
Dr. Ticket, fol. 2, 50, copy to serve 14, serving sub. 12½, ... 82½
Wit. attending, ... 50
May 17, Dr. Sub. for witness Kay, fol. 3, and eng. . 1 26
Dr. Ticket, fol. 2, and copy 70, serving 12½, wit. fee, 1 32½
May 23, Dr. Sub. for witness Kay, fol. 3, and eng., . 1 26
Dr. Ticket, fol. 2, and copy, 70, serving 12½, and wit. fee 50, ... 1 32½
Dr. sub. for witness Kinney, fol. 3, eng., . . 1 26
Dr. Ticket fol. 2, and copy 70, serving 12½, . . 82½
Wit. fee 50, travelling fee, 20 miles, . . . 1 30

	Solicitor attending,	$1 00
May 30,	Dr. Sub. for witness Whitehead, fol. 3, and eng.,	1 26
	Dr. Ticket, fol. 2, and copy 70, serving 12½,	82½
	Wit. fee 50, travelling fee 20 miles,	1 30
	Solicitor attending,	1 26
June 5,	Dr. and eng. sub. for witness Selden, fol. 3,	1 26
	Dr. Ticket and copy 70, serving 12, and wit. fee 50,	1 32½
	Dr. Sub. and eng. for witness Dawson. fol. 3,	1 00
	Dr. Ticket and copy 70, serving 12½,	82½
	Witness fee 50, travelling fee 320 miles, at 4,	13 30
	Dr. and eng. sub. for witness Kay, fol. 3,	1 26
	Dr. Ticket and cop. 70, serving 12½ wit. fee 50,	1 32½
	Solr. attending,	1 00
11,	Dr. and eng. sub. for witness Romeyn, f. 3,	1 26
	Dr. Ticket and copy 70, serving 12½, witness fee 50,	1 32½
	Solr. attending,	1 00
15,	Dr. and eng. sub. for witness Acres, f. 3,	1 26
	Dr. Ticket and copy 70, serving 12½, witness fee 50,	1 32½
	Solr. attending,	1 00
	Dr. and eng. sub. for witness Ives, fol. 3,	1 26
	Dr. Ticket and copy 70, serving 12½, witness fee 50,	1 32½
Sept. 24,	Dr. and eng. sub. for witness James, f. 3,	1 26½
	Dr. Ticket and copy 70, serving 12½, witness fee 50,	1 32
	Solr. attending, adjd. to Sept. 27th,	1 00
June 20,	" " " July 13th,	1 00
July 13,	" " " Sept. 27th,	1 00
Sep. 17,	" " " Sept. 24th,	1 00
Sep. 27,	" " " Oct. 4th,	1 00
Oct. 4,	" " " Oct. 15th,	1 00
Oct. 15,	" " " Oct. 25,	1 00
Oct. 25,	" " " Nov. 1st,	1 00
Nov. 1,	" " " Nov. 9th,	1 00
Nov. 9,	" " " Nov. 13th,	1 00
Nov. 13,	" " " Nov. 27th,	1 00
Nov. 27,	" " " Dec. 4th,	1 00
Dec. 4,	" " " Dec. 5th,	1 00
Dec. 5,	" " " Dec. 13th,	1 00
Dec. 13,	" "	1 00
Dec. 22,	" "	1 00
1855.		
Feb. 28,	" "	1 00
Mar. 7,	" "	1 00
	Dr. instructions for examining plaintiff's witnesses, 12 at 25c.,	3 00
	Dr. instructions for cross-examining defendant's witnesses, 4 at 25c.,	1 00

	Dr. afft. attendance witness, fol. 6, eng. and oath, .	$2 64½
Octob.	Dr. and eng. afft. for mo. for commission to examine Hammond, a witness residing in Chicago, fol. 5, and eng. and oath, ...	2 22½
	Copy afft. to serve 35, copy to keep 35, . .	70
	Notices, motion, and service, ...	37½
	Dr. and eng. afft. service fol. 2, and oath 96½, and copy affidavit to annex 35, ...	1 31½
	Solr. and counsel fee and brief on motion, . .	5 00½
	Dr. order allowing commission, fol. 3, and eng., .	1 26
	Copy for deft's solr. 21, solr. attg. to enter. order 50,	71
	Clk. entg. 24, cert. copy 18, copy to serve 21, .	63
	Serving copy and notice, ...	37½
	Drawing commission, fol. 2, and eng. . . .	84
	Dr. instructions to commr. fol. 5 and eng. . .	2 10
	Copy commission and instructions, fol. 7, . .	49
	Dr. interrogatories and eng. fol. 11, . . .	4 62
	Copy to keep 77, copy to serve 77, . . .	1 54
	Copy to serving with notice settlement . . .	37
Nov. 3,	Solr. attending on settlement, ...	1 00
	Solr. attending on settlement cross-interrogatories, .	1 00
	Copy direct and cross-interrogatories to annex to com. fol. 23, ...	1 61
	Copy schedule annexed to interrogatories, fol. 7, .	49
1856.		
Feb. 28,	Paid commissioner's fees executing com. . .	15 00
1855.		
Feb. 6,	Paid D. B. Bodine, clerk in Chan'y New Jersey, for manuscripts, ...	8 58
March 10,	Paid, ...	19 96
April 17,	Paid, ...	6 00
June 2,	Paid, ...	1 00
Oct. 3,	Paid Asa Whitehead for deposition ex. No. 9, .	20 00
15,	Paid Wm. H. Pinckney for papers, ex. No. 10, .	10 00
	Copy commission and return for Referee fol. 35, .	2 45
1856.		
Jan. 30,	Paid Referees' fees, ...	74 00
	Copy testimony, exhibits, &c., taken before Referee, fol. 415, ...	29 05
	Copy for defendant, ...	29 05
1855.		
May Term,	Notice hearing 37½, Dr. affvt. of service, fol. 2, eng. and oath 96½, notice to annex 14, . .	1 48
	Note of issue for clerk and service, . . .	37½
	Solicitor and counsel fee, ...	2 50
June Term,	same costs, ...	4 35½
Oct.	" " "	4 35½

Nov. Term, same costs,	4 35½
Dec. " " "	4 35½
1856.	
Jan. " " "	4 35½
Feb. " " "	4 35½
March " " "	4 35½
April " " "	4 35½
May " " "	4 35½
19, Recd. affvt. and notice, motion to amend answer, Dr. and eng. affts. to oppose fol. 38, and oaths,	16 08
Copy exhibits to annex, Complt. Hoyt *v.* Griswold, fol. 832 at 7,	58 52
Copy for court,	2 66
Copy exhibits and papers annexed fol. 832,	58 32
Copy pleadings, exhibits, testimony, &c., for court, folio 1229,	86 03
Solr. and counsel fee, and brief on motion,	5 00
Dr. order denying motion, fol. 3 and eng.	84
Copy for defts. solr. 21, solr. attending to enter 50,	71
Clerk entg. 24, cert. copy 18, copy to serve 21,	63
Serving copy and notice,	37½
Down,	$147 49
	145 48
	52 45
	52 20
	461 90
	859 92

Adjusted at eight hundred and fifty nine $\frac{52}{100}$ dollars, New York, March 9th, 1857.

MURRAY HOFFMAN.

In my opinion no allowance ought to be made to the plaintiff.

M. HOFFMAN.

Add interest on judgment from Feb. 1, 1857, up to which time interest is computed in the judgment, to the further period of March 10, 1857, being 1 mo. 10 days, on the following sums appearing in Schedules A. and B., viz.:

Schedule A.,	$12,880 80
	1,719 03
	1,719 03
	1,719 03
	1,719 03
	1,719 03
	1,719 03
	1,719 03

	1,719 03
	835 40
	790 34
	12,288 88
	$40,555 72
Schedule, . . .	$24,577 60

Interest on this sum of	$65,133 32	1 mo. 10 days,	$416 09
This sum must be added to the costs, ...			859 52
			$1,275 61

New York Superior Court.

JESSE HOYT
v.
HENRY SHELDEN, Executor, &c., and others.

SIR: Please take notice that the Bill of Costs, of which the annexed is a copy, will be taxed by Mr. Justice Hoffman on the 14th inst., at Chambers, at 10 o'clock, A.M.

Dated February 12, 1857.

Yours, &c.,

S. SANXAY,
Plaintiff's Attorney.

To W. A. HARDENBROOK, Esq.,
Attorney for Defendant.

A Copy.

GEO. T. MAXWELL,
Clerk.

At a Special Term of the Superior Court, held at the City Hall in the city of New York, on the 12th day of February, A.D. 1857.

Present, MURRAY HOFFMAN, Esquire, *Justice.*

JESSE HOYT
against
HENRY SHELDEN, Executor of Abraham G. Thompson, deceased, Honora Fisk, William H. Bolton, and David B. Baylis, Executors of George B. Fisk, deceased, The Long Island Railroad Company, Digby V. Bell, formerly Auditor-General, George B. Cooper, formerly Treasurer, and Gideon O. Whittemore, formerly Secretary of State of the State of Michigan.

This case having been brought on to a hearing on the complaint,

and the several answers of the defendants, the executor of Thompson, the Long Island Railroad Company, and the executors of Fisk, and upon proofs as to all the defendants, except the public officers of the State of Michigan, from which proofs it appears, that said Bell, Cooper, and Whittemore were each public officers at the time stated in the complaint in this cause, and were, by the Statute Law of the said State of Michigan, directed to act in the premises referred to, and it appearing to this Court by due proof, that said persons last named have not appeared in this cause, and that all necessary and proper proceedings have been taken under the laws of this State, and the rules and practice of this Court, to compel such appearing, and upon filing such proof, and upon hearing Mr. Sanxay, and Mr. Evarts, of counsel for the said plaintiff, and Mr. Rodman, of counsel for the defendants, the executors of George B. Fisk, deceased, and Mr. DeForest, of counsel for the defendants, The Long Island Railroad Company, and Mr. Jordan, of counsel for the defendant, Shelden, the executor of said Abraham G. Thompson, deceased, severally, for said respective defendants, and mature deliberation being thereupon had—

It is now ordered, adjudged, and decreed, that the said plaintiff do recover judgment against the said public officers of the State of Michigan, and the said executor of said Thompson, and the said executors of said Fisk, and the said Long Island Railroad Company severally, as hereinafter stated, and that the title to the property, bonds, and mortgages, in the complaint mentioned and described, be, and the same is hereby declared to be in the plaintiff, in this action, notwithstanding the supposed assignment and transfer of the same to the State of Michigan as set out in said complaint, and that such title became, and was vested in him, by and through, and at the time of the transfer thereof to him, by the receiver of The Morris Canal and Banking Company, and that said State never acquired or became possessed of any right, title, or interest therein, or thereto, and that the said plaintiff do recover the same, and the increase thereof, and the property and bonds, and securities into which the same may have been converted as hereinafter stated.

And it is also ordered, and adjudged, and decreed, that the right of the said plaintiff to the forty bonds of the Long Island Railroad Company for one thousand dollars each, and to forty other bonds of the same Company, for two hundred and twenty-eight dollars and eighty-eight cents each, all of which bear date, the first day of May, 1843, and payable one-fourth on the first day of May, 1847, one-fourth on the first day of May, 1848, one-fourth on the first day of May, 1849, and one-fourth on the first day of May, 1850, with seven per cent. interest, payable half-yearly, on the first days of November and May, in each year as mentioned and referred to in the pleadings and proofs in this cause is fully established, and the same are adjudged and decreed to belong to him as his own property, together

with the mortgages given by the said Long Island Railroad Company to Abraham G. Thompson to secure the payment of the said bonds, with the interest thereon.

And it is further ordered, adjudged, and decreed, that the said Henry Shelden, executor of the said Abraham G. Thompson, deceased, do pay out of the estate of said Thompson, to the said plaintiff, the principal sum of $24,577 76, paid by the said Long Island Railroad Company, on the first day of May, in the years 1847 and 1848, one-half of which on each of said day, the same being for twenty bonds of said Railroad Company, of one thousand dollars each, and twenty other bonds of same Company, for $228 88 each, and the interest thereon as per Schedule A., hereunto annexed, and forming a part of this decree, which said principal sum and said interest amount together to the sum of $68,297 51.

And it is further ordered, adjudged, and decreed, that the said Henry Shelden, executor as aforesaid, do deliver to the said plaintiff, twenty bonds of one thousand dollars each, made by the said Railroad Company to said Thompson, or bearer, bearing date the first day of May, 1843, ten of which are made payable on the first day of May, 1849, and the other ten, on the first day of May, 1850, with coupons thereto attached for interest on the same, at the rate of seven per cent. per annum, from the first day of May, 1848, and that he also deliver to the plaintiff twenty other bonds of the said Long Island Railroad Company, for $228 88 each, and dated the said first day of May, 1843, and payable to Abraham G. Thompson, or bearer, ten of which on the first day of May, 1849, and the other ten on the first day of May, 1850, with interest at the rate of seven per cent. per annum from the first day of May, 1848, and in default of the delivery of the said bonds within ten days after the entry of this decree, and a service of a copy thereof on the said Henry Shelden, executor as aforesaid, that he the said Henry Shelden, executor, shall pay out of the estate of the said Abraham G. Thompson, deceased, to the said plaintiff, the said principal sum mentioned in said forty bonds, and the interest thereon from the first day of May, 1848, at and after the rate of seven per cent. per annum, which together would amount to the sum of $40,131 38, as per Schedule B., annexed, and which forms a part of this decree.

And it is further ordered, adjudged, and decreed, that in the event the said Henry Shelden, executor as aforesaid, shall not pay to the said plaintiff the sum of money hereinbefore stated, and delivered to him, the said plaintiff, the forty bonds also hereinbefore mentioned, the principal sum of which amounts to $24,577 76, the defendants, the said Long Island Railroad Company, shall pay to the said plaintiff the principal sum of $12,288 88, paid by the said Railroad Company in the month of May, 1848, and after the commencement of this action, and also, the sum of $24,577 76, admitted by the answer of said Railroad Company to be due and unpaid, and the interest

on both said sums, from the first day of May, 1848, to the 1st February, 1857, which together would amount to the sum of $59,448 03, upon delivery to the said Long Island Railroad Company of the said twenty bonds of $1000 each, and the said twenty bonds of $228 88 each, as by Schedule C., hereunto annexed, and forms part of this decree.

And it is further ordered, that this decree shall in no wise interfere with the equities of the defendants as between themselves.

And it is further ordered, that the said plaintiff do recover against the said defendant Henry Shelden, executor as aforesaid, his costs to be taxed in this action, and as to the other defendants, there be no recovery of costs to either party.

And it is further ordered, adjudged, and decreed, that the said Henry Shelden, executor as aforesaid, do assign to the said plaintiff the said several mortgages given by the said Long Island Railroad Company to said Thompson, to secure the payment of the bonds hereinbefore referred to.

(Signed) MURRAY HOFFMAN.

Schedule A.

1847.			
May 1, Paid by Long Island Railroad Company,			
10 bonds of $1000 each, .	$10,000 00		
10 bonds of $228 88, . .	2,288 88		
	12,288 88		
Interest to Feb. 1, 1857, 9 yrs. 9 months, ...	8,172 10		
	20,460 98		
Coupons or interest on 40 bonds of $1000 each, . . .	40,000 00		
Coupons or interest on 40 bonds of $228 88 each, . .	9,115 20		
	49,115 20		
1 November, 1843, 6 months' interest, ...	1,719 03		
Interest to Feb'y 1, 1857, 13 yrs. 3 mos., . . .	1,584 37	3,303 40	
1 May, 1844, 6 months' interest on	1,719 03		
1 Feb'y, 1857, interest to this day, 12 yrs. 9 mos., . .	1,534 73	3,253 76	

1844,		
Nov. 1, Interest 6 months, . . .	$1,719 03	
1857,		
Feb. 1, Interest to this date, 12 yrs. 3 mos., ...	1,474 16	$3,193 19
1845,		
May, Interest 6 months, . . .	1,719 03	
1857,		
Feb. 1, Interest to this day, 11 yrs. 9 mos., ...	1,413 90	3,132 93
1845,		
Nov. 1, Interest 6 months, . . .	1,719 03	
1857,		
Feb. 1, Interest to date, 11 yrs. 3 mos.,	1,353 75	3,072 78
1846,		
May 1, Interest 6 months, . . .	1,719 03	
1857,		
Feb. 1, Interest to date, 10 yrs. 9 mos.,	1,293 56	3,012 59
1846,		
Nov. Interest 6 months, . . .	1,719 03	
1857,		
Feb. 1, Interest to date, 11 yrs. 3 mos.,	1,233 40	2,952 43
1847,		
May 1, Interest 6 months, . . .	1,719 03	
1857,		
Feb. 1, Interest to date, 9 yrs. 9 mos.,	1,173 13	2,892 16
		$45,274 22
1847,		
May 1, There was paid, as before stated, the sum of	12,288 88	
Leaving due for large bonds, 30 of $1000 each, . . .	30,000 00	
Small bonds, 30 of $228 88 each, ...	6,866 40	
	36,866 40	
1847,		
Nov. 1, Interest on this sum for 6 mos.,	1,290 34	
1857,		
Feb. 1, Interest on this sum for 9 yrs. 3 mos., ...	835 46	2,125 80
1848,		
May 1, Six months' interest as above,	1,290 34	

1857,		
Feb. 1, Interest to date, 8 yrs. 9 mos.,	$790 34	$2,080 68
1848,		
May 1, Paid by Long Island Railroad Company as follows,		
10 bonds of $1000 each, .	10,000 00	
10 bonds of $228 88 each, .	2,288 88	12,288 88
1857,		
Feb. 1, Interest to this date, 8 yrs. 9 mos., ...	7,527 93	69,297 51
Leaving due of principal,		
20 bonds of $1000 each, .	20,000 00	
20 bonds of $228 88 each, .	4,577 60	
	24,577 60	

Schedule B.

20 bonds for $1000 each, due 1 May, 1848, . . .	20,000 00	
20 bonds for $228 88 each, due 1 May, 1848, . . .	4,577 60	
	24,577 60	
Interest from 1 May, 1848, to 1 Feb., 1857, 8 yrs. 9 mos.,	15,553 78	40,131 38

Schedule C.

1848,		
May 1, Paid by Long Island Railroad Company the principal sum of	12,288 88	
1857,		
Feb. 1, Interest to this day, 8 yrs. 9 mos., ...	7,526 54	19,815 42
1848,		
May 1, The Long Island Railroad Company admit in the answer there was due on this day, .	24,577 62	
1857,		
Feb. 1, Interest to this day, 8 yrs. 9 mos., ...	$15,054 79	39,632 41
		$59,448 03

MURRAY HOFFMAN.

(Indorsed.) Filed March 4, 1857.

JUDGMENT BOOK, 12th Feb., 1857.

Costs $859 52, Judge book to be added, which said costs were adjusted at $859 52/100 together with interest on the sum of $65,133 61/100 from 1st to 12th of February, 1857, 12 days, which, with said costs, amounts to

DOCKET BOOK of the April 1, 1857.

Shelden,	$	
L. I. R. R. Co.	$59,448 03	
$110,704 50		
416 09 de. in.		
$110,288 41		
	$65,133 32	
Then add interest on the $65,133 32 to the sum of		$110,288 41
and docket for the balance.		
		110,288 41
Int. on $65,133 32 from 1st to 12th Feb., 12 days,		151 95
		$110,440 36

(Indorsed) Filed, March 4, 1857. 12, 15.
Re filed, April 4, 1857. 12, 15.

Superior Court.

JESSE HOYT
agt.
HENRY SHELDEN, executor of ABRAHAM G. THOMPSON, deceased, impleaded with others. } Case under 29th Rule.

This suit was commenced on or about the 4th day of December, in the year 1847, by Jesse Hoyt, as plaintiff, against Abraham G. Thompson, George B. Fisk, Digby V. Bell, as Auditor-General, George B. Cooper, as Treasurer, and Gideon O. Whittemore, as Secretary of the State of Michigan, and the Long Island Railroad Company.

The bill of complaint was served on the solicitor for Thompson on or about the 8th day of December, 1847, and on the solicitors for the other defendants respectively, about the same time.

The defendants, Abraham G. Thompson, George B. Fisk, and the Long Island Railroad Company, appeared and demurred to the bill for want of equity, and on account of multifariousness, and the other defendants did not appear.

The cause was first heard at a special term of the Supreme Court,

before Hurlburt, Justice, and a decree was made therein in January, 1849, overruling the demurrers, with leave to the defendants to answer.

A rehearing was granted by the Supreme Court. The action was then transferred to the Superior Court of the City of New York, pursuant to the statute in that case made and provided: (Laws of 1849, ch. 337); and the latter court gave judgment reversing the decree of the said special term, and dismissing the complainants' bill with costs. (Vide 3 Sandf. Superior Court Reports, 416.)

George B. Fisk died at some time previous to the 11th day of February, 1850, on which day the suit was by order of the court duly revived against Honora Fisk, William H. Bolton, and David B. Baylis, executors, who had previously been appointed, and duly qualified executors of his will. And, the plaintiff appealed from said last-mentioned judgment to the Court of Appeals; and the latter court gave judgment in September, 1851, reversing the said judgment of the Superior Court, and overruling said demurrers, with liberty to the defendants to answer the bill. (Vide 1 Selden's Rep. 320.)

Abraham G. Thompson died on the 29th day of October, 1851, and the defendant, Henry Shelden, was duly appointed executor of his will, on the 3d day of January, 1854.

And the action was on motion revived on the 29th of September, 1854, against the said defendant, Henry Shelden, executor, &c.

The defendant Shelden put in his original answer on the 30th day of Dec., 1854, by Isaac Dayton, his attorney.

The executors of Fisk, and the Long Island Railroad Company, also answered by their respective attorneys.

And on the 27th day of April, 1855, an order by consent of parties was entered, referring it to Abraham Underhill, Esquire, to take and report the testimony in the case, who took such testimony and reported it accordingly, on the 7th day of March, 1856.

And afterwards, by leave of the court for that purpose first had and obtained, the said defendant, Henry Shelden, put in a several and separate supplemental answer, on the 17th day of December, 1856, by Charles S. Jordan, his attorney, who had in the meantime, on the 25th of June, 1855, been substituted in the place of the said Isaac Dayton; and the defences of the said several defendants who appeared were thenceforward separately conducted. William A. Hardenbrook was afterwards, on the 20th of January, 1857, substituted attorney for the said defendant, in the place of Charles S. Jordan. No other changes of parties or attorneys have taken place.

The bill of complaint stated that in December, 1824, the Legislature of the State of New Jersey passed an Act to incorporate "The Morris Canal and Banking Company," with authority to construct a canal in that State, and also to carry on the business of banking. The charter, which was set forth in the bill of complaint, provided that the business of the Company should be managed by fifteen di-

rectors, who were required to choose a president from among themselves, and were authorized to appoint treasurers, collectors, cashiers, and other officers and agents necessary for conducting the affairs of the Company. The charter was silent in relation to the powers of the president and cashier. After constructing the canal and carrying on the business of banking, until February, 1837, the Company became insolvent, in fact, and within the meaning of the statute of New Jersey, entitled "An Act to prevent frauds by incorporated companies," passed February 16th, 1829, the 7th section of which declared void, as against creditors, all sales of the effects of an incorporated company, made by its officers or agents, after such company should become insolvent, or should suspend its ordinary business for want of funds to carry on the same, or made in contemplation of insolvency; with a proviso, saving the rights of bona fide purchasers.

That in the course of the lawful dealings between the Morris Canal and Banking Company and the Long Island Railroad Company, the latter Company became indebted to the Morris Canal and Banking Company in about the sum of sixty thousand dollars. On the 3d of November, 1839, the said Railroad Company, to secure that debt, executed to the Morris Canal and Banking Company, a mortgage, signed by George B. Fisk, as president, upon certain engines, cars, and other property of the Company. Prior to the date last mentioned, the Morris Canal and Banking Company had become largely indebted to the State of Michigan, which indebtedness had been some time due, and remained unpaid, and the agent and officers of the State were informed of the insolvency of said Company, and that it had suspended its ordinary banking business for want of funds to carry the same on. The treasurer of said State, in making efforts to get security for the debt, in the year 1840, caused a bill of complaint to be prepared against the said Morris Canal and Banking Company, with the view of filing the same in the Court of Chancery of New Jersey, which was sworn to by said treasurer, on the 23d of October, 1840, in which it was stated that the said Company had been insolvent since the 1st day of March, 1840; that suits for the recovery of large debts were then pending against the said Company, and that since such insolvency the directors had transferred effects of the Company to divers persons, and bodies politic and corporate, which transfers were contrary to the before-mentioned statute, and were void. That the said treasurer, notwithstanding his knowledge of those facts, and that the Company had no right to transfer its effects, on the 9th of December, 1840, prevailed upon the executive officers (the president and cashier) of the Company, without the knowledge, assent, or approbation of a majority of the directors, to assign, with other items of property, to the State of Michigan, as collateral security for the sum due to said State, the debt due from the Long Island Railroad Company to said Morris Canal and Bank-

ing Company, which had been on that day reduced to forty thousand dollars, together with the mortgage given to secure the payment thereof.

On the 6th of March, 1841, the Long Island Railroad Company, as additional security for the said debt, executed to the Morris Canal and Banking Company a mortgage upon the lands on which their road was built, and other real estate, in the counties of Queens and Suffolk, in the State of New York, which mortgage, on the 26th of April, 1841, was assigned by the said officers of the Morris Canal and Banking Company, without the authority of the directors thereof (though the assignment fraudulently recited that it was made in pursuance of a resolution of the board of directors), to the State of Michigan, as further security for the debt due to that State. By an act of the Legislature of Michigan, passed in February, 1842, the Auditor-General, State Treasurer, and Secretary of State for the time being, were made Trustees, to take charge of the property, &c., assigned to the State, with power to sell and convey the same. On the 8th of July, 1842, the mortgage on the personal property of the Long Island Railroad Company was surrendered, and a new mortgage executed to the State of Michigan, upon the same property, to secure the debt. In the spring of 1843, the defendant, Abraham G. Thompson, in behalf of himself and George B. Fisk, both well knowing all the circumstances before mentioned, purchased the debt against the Long Island Railroad Company, and the securities therefor, for twenty thousand dollars, and received an assignment thereof from the State of Michigan. Thompson subsequently surrendered the mortgage upon the movables of the Company, and received a new mortgage thereof to himself for the debt and interest, with the bond of the Company to him for the principal debt of $40,000, and afterwards, before the commencement of this suit, received some payments upon the principal and arrears of interest of the debt.

On the 12th of May, 1841, Abraham Richards and David Selden recovered a judgment in the Supreme Court of New Jersey, for upwards of $30,000, and subsequently recovered and obtained, by assignments, other large judgments, against the Morris Canal and Banking Company. Near the close of the year 1841, they filed their bill in the Court of Chancery of New Jersey, against said Company, alleging its insolvency, and praying for the appointment of a receiver, in pursuance of the act of 16th February, 1829, before mentioned, which authorized that Court to appoint a receiver or receivers, or trustees of an insolvent corporation, with power to take into their possession "all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description, belonging to the Company at the time of its insolvency or suspension of business, and to sell, convey, or assign the said real or personal estate." In January, 1842, a decree was made in that suit, appointing re-

ceivers, with the powers specified in the statute. The receivers did not, until a considerable time after their appointment, ascertain that the State of Michigan had obtained the said mortgages, and they had no notice of the intention of the State to sell them, or of the proceedings in that respect.

The plaintiff in this suit, in December, 1844, purchased of Richards and Selden their judgments against the Morris Canal and Banking Company, and took a conveyance of the same to S. Sanxay, the plaintiff being at that time one quarter owner thereof; subsequently he became the sole owner, and Sanxay conveyed to him. The receivers, in November, 1845, by order of the Court of Chancery of New Jersey, in part payment of the said judgments, assigned to Sanxay the debt against the Long Island Railroad Company, hereinbefore referred to, and the said Sanxay assigned the same to the plaintiff.

The plaintiff applied to Thompson and Fisk, and the Railroad Company, and requested them to account to him for said debt, securities, and interest, or for the products thereof, amounting in the whole to about sixty-five thousand dollars, which they refused to do.

The prayer of the bill was, that Thompson might be decreed to assign to the plaintiff the bond and the mortgages taken for the debt of $40,000 and interest, and that he or Fisk, or both, should pay to the plaintiff all the money received by them on account of such debt and interest; and if the securities had been parted with, should pay the value thereof with interest; or that the Long Island Railroad Company should account to the plaintiff for the $40,000 and interest.

The answer of the defendant Henry Shelden, executor, &c., admits the act of incorporation of the Morris Canal and Banking Company, stated in the bill, and the several other acts, copies of which are annexed to the said bill, and denies that the Company became insolvent, as therein alleged. It admits the incorporation and organization of the Long Island Railroad Company, and the several acts relating thereto, and that Fisk was president thereof from prior to 1839 down to 1847, and that the Long Island Railroad Company became indebted to said Morris Canal and Banking Company $60,000, and executed a mortgage, as alleged in the bill. It admits said Canal Company became largely indebted to Michigan, but is ignorant at what time or how; denies that the executive officers of the Morris Canal and Banking Company assigned the demand in question without authority of the directors, but, on the contrary, avers they had such authority, and that they executed said assignment according to the usages of the Company. It alleges that the Company conducted the greater part of their business in the city of New York, and that the assignment was executed there in the ordinary manner of doing business, and for valuable consideration, and that a copy of the same is annexed to the bill as Schedule "A." The defendant insists that it vested a good title in Michigan, and that Thompson took a good

title by his purchase from that State. It admits that the officers of said Canal Company, on the 6th of March, 1841, obtained from said Railroad Company an additional mortgage security for said debt on their land and other property, and that it was assigned by said executive officers under the authority of the directors to the said State of Michigan as a further security, on the 26th day of April, 1841, in the usual and ordinary way of business. It admits the passing of the act of the Legislature of Michigan of the 17th of February, 1842, and that on the 8th day of July, 1842, said Railroad Company received a surrender of the chattel mortgage, and executed a new mortgage to the State of Michigan on the same chattels.

It admits that, on the 24th of May, 1843, the State of Michigan sold said debt at public auction in the city of New York for $20,000, to Abraham G. Thompson, as the highest bidder, at a sale duly advertised and fairly conducted.

And it admits the change of securities by said Railroad Company to said Thompson on the 15th of June, 1843, as alleged in the bill; and also admits the execution by said Railroad Company to said Thompson of the additional mortgage of the 6th of December, 1845, as alleged in the bill; and that said Thompson also received from said Railroad Company the bonds mentioned in the bill.

The defendant avers, that when the alleged assignment was made to Hoyt, the securities were not in the possession of the receivers, but were in the possession of Abraham G. Thompson under a valid title, and that the alleged assignment therefore was illegal and void. All the other charges contained in the bill are ignored or denied.

As the executors of Fisk and the Long Island Railroad Company have not appealed, it is supposed unnecessary here to give any further abstract of their answers than that they deny the whole equity of the plaintiff's bill.

The supplemental answer of the defendant Shelden, states that Thompson, his testator, and one George Griswold, were the joint purchasers of the said debt against the Long Island Railroad Company at the sale on the 30th day of May, 1843, and that they paid the sum of $20,000 therefor, and that the change of the securities and execution of the mortgage on the 15th of June, 1843, and the giving of the bond by the Long Island Railroad Company to said Thompson, were for the joint interest and benefit of said Thompson and Griswold. That after said Griswold had taken possession of said securities and converted them to his own use, according to his joint right, title, and interest therein, and had become jointly liable with said Thompson to the said plaintiff therefor, if either said Griswold or Thompson ever were so liable, the plaintiff, in consideration of $15,000, did, on the 17th day of November, 1853, release and discharge said Griswold from all claims and demands in law and equity for or on account of said debt and securities, and which said release,

he, the said defendant, Shelden, insists, operated in law as a release also to the said Abraham G. Thompson.

Superior Court.

JESSE HOYT
v.
HENRY SHELDEN, Executor of the Will of ABRAHAM G. THOMPSON, dec'd, impleaded with others. } Case.

This was a suit in equity, commenced in the Supreme Court by the above-named plaintiff against Abraham G. Thompson, the defendant's testator, in his lifetime, and others. The bill was filed in December, 1847, with Schedules A., B., and C., therein referred to, and the original act of the Legislature of the State of New Jersey, incorporating The Morris Canal and Banking Company, and the various acts amendatory of the same, and thereto annexed: which said bill and schedules were in the words and figures following, that is to say,—

To the Supreme Court of the State of New York, in Equity:

Humbly complaining, showeth unto this Court, your orator, Jesse Hoyt, of the city of New York, counsellor-at-law, that on the 31st day of December, in the year 1824, the Legislature of the State of New Jersey passed an act entitled, "An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers," the preamble to which sets forth, that "Whereas the construction of a canal to unite the River Delaware, near Easton, with the tide-waters of the Passaic, will be of great public benefit and advantage to the people of New Jersey; now therefore to secure to the State the results of this public work, and also as an inducement to a company to engage in this important undertaking, and in consideration of the risks and expenditures which they may encounter in its execution and operation,"—therefore the said Legislature enacted, that "Jacob Thompson and others, should be, and were thereby incorporated by the name of The Morris Canal and Banking Company," with the privileges and immunities in the said act described, a copy of which said act is hereto annexed, as also copies of several amendments and additions to said original act, and which your orator craves to make and have considered as part of this his bill of complaint.

And your orator further shows, that soon after the passage of the said act of 31st December, 1824, hereinbefore referred to, such proceedings were had by the said Morris Canal and Banking Company, as that the said Company commenced the construction of the said canal from the Passaic River at Newark, in the said State of New

Jersey, to the Delaware River opposite the borough of Easton, in the State of Pennsylvania, which said canal was finished and put in operation about the year 1831, and the said Company also commenced the business of banking with a capital stock for that purpose of $100,000. Soon after the passage of said last-mentioned act, and such proceedings were subsequently had, that in or about the month of December, in the year 1831, the banking capital of said Company was increased to the sum of one million of dollars.

And your orator further shows, that at a subsequent period, and about the year 1836, the said Company completed their said canal from the said city of Newark to Jersey City, the whole cost of which, from the Delaware to the Hudson River, was about the sum of four millions of dollars. That in the year 1838, the gross receipts on said canal were about the sum of $106,000, and in the year 1839, they were about the sum of $71,000, and in the year 1840, about the sum of $43,000, and in the year 1841, the said canal yielded little or no revenue, but was undergoing repairs.

And your orator further shows, that in or about the month of December, 1836, the said Company leased the said canal, and its appurtenances, to an incorporated company in the State of Pennsylvania, for a period of five years, from the first day of said month of December, the better to enable the officers and directors of said Morris Canal and Banking Company to devote their time and abilities to the banking business of said Company, in which shortly before the time last mentioned, the said officers and directors had, in the name of said Company, largely engaged, and to such an extent, as that there was due to said Company on the 1st February, 1837, in bills receivable, loans, and other commercial contracts, near the sum of five millions of dollars, a very large amount of which was wholly lost to said Company, and the said Company was thereby rendered insolvent in fact, and also within the meaning of the Act of the State of New Jersey, passed on the 16th day of February, 1829, and entitled "An Act to prevent frauds by incorporated companies."

And your orator further shows, that on the 24th day of April, 1834, the Legislature of the State of New York, passed "An Act to incorporate the Long Island Railroad Company."

And in pursuance of the provisions in said act contained, the said Company became organized and went into operation, and on the second day of April, 1836, the said Legislature passed another act in relation thereto, entitled "An Act to authorize the demise of The Brooklyn and Jamaica Railroad to the Long Island Railroad Company." And on the 20th day of April, 1839, the said Legislature passed another act in relation to said Company, entitled "An Act to amend the charter of the Long Island Railroad Company," and on the 29th day of April, 1841, the said Legislature passed another act in relation to said Company, entitled "An Act to aid in the construction of the Long Island Railroad;" all of which last-mentioned acts

were accepted by said Company; which said several acts your orator craves leave to make part of this his bill of complaint, and to refer to the same or to such parts thereof as is or are material or necessary, and to make such proof thereof as may be required by this honorable Court.

And your orator further shows, that for a long period prior to the first day of November, 1839, to some time in the year 1847, George B. Fisk was president and the active manager of the said The Long Island Railroad Company.

And your orator further shows, that in the course of the lawful dealings between the said Morris Canal and Banking Company and the said The Long Island Railroad Company, the said Railroad Company became indebted to the said Canal and Banking Company in the sum of about sixty thousand dollars, and to secure the payment thereof, the said Railroad Company in pursuance of the power in the said act of incorporation granted, and by order of the board of directors of said Railroad Company, on the third day of November, in the year 1839, executed and delivered to the said The Morris Canal and Banking Company, a mortgage signed by George B. Fisk, as President, upon "all the following described goods and chattels, viz.: 3 locomotive engines, with tenders, viz., Ariel, Hicksville, and Post Boy, 17 passenger cars, 41 burden or freight cars, 3 baggage cars, 5 turning tables, 2 cranes for hoisting, 2 sets of blacksmiths' and engineers' tools, 15 tons railroad iron, 18 tons refuse and old iron, 2 sawing machines, 18 horses, 9 sets of harness, and 100 cords of wood;" a copy of which said mortgage was filed in the office of the Clerk of the County of Kings, about the 23d day of said month of November, 1839, where the same now remains, and to which, or a certified copy thereof, for greater certainty in this behalf your orator craves leave to refer.

And your orator further shows, that at a meeting of the board of directors of the Morris Canal and Banking Company, had on the 25th of June, 1840, the said George B. Fisk was nominated as a director of the said last-named Company; and at a subsequent meeting of said board of directors, that is to say, a meeting of said board held on the 22d day of September, in the said year 1840, such proceedings were had, that the said George B. Fisk was informed that he had been elected a director of said last-named Company, and the said George B. Fisk, upon such information, accepted of said appointment; and on the 15th day of the month of October following, he, the said George B. Fisk, acted in the capacity of such director of said Company, and met with a portion of said directors, purporting to act as a board of the same; and he, the said George B. Fisk, took upon himself the responsibility of such director, and thereupon investigated and became acquainted with the affairs and condition of said Company, and he continued as such director until the affairs of said Company went into the hands of receivers as hereinafter mentioned.

And your orator further shows, that prior to the third day of November, 1839, the said Morris Canal and Banking Company became largely indebted to the State of Michigan, one of the United States of America, by reason of the connection of said Company with what was called the five million loan of said State, and which said debt the Company was unable to pay, because it had long prior to the day last aforesaid became, and at all times thereafter continued to be insolvent; and so the said State of Michigan, through its proper officers and agents, well knew. But, nevertheless, the said State of Michigan, through its said officers and agents, made efforts to collect said debt so due from said Morris Canal and Banking Company, and one Robert Stuart, Esq., the then Treasurer of said State, under and in pursuance of the powers and authority in him vested, visited the office of said Company, with the view of securing, or attempting to secure said debt, at sundry times during said year 1840, and after negotiating for some months with the president of said Company, with the view of obtaining security for said debt, and failing to obtain such security, the said Robert Stuart caused a bill of complaint to be drawn against the said Company, with a view of filing the same in the Court of Chancery of the State of New Jersey, which said bill the said Robert Stuart swore to on the 23d day of October, 1840, before one of the Masters of the Court of Chancery of said State of New Jersey, the said master having authority to administer oaths in such case.

And your orator further shows, that in said bill, among other things it is stated, under the oath of said Robert Stuart, the Treasurer of said State, as follows:

"And this complainant further shows unto your excellency, that the said Morris Canal and Banking Company have become and are insolvent, and did become so insolvent on the first day of March last, within the true intent and meaning of the Act of the Legislature of the State of New Jersey, passed on or about the 16th day of February, 1829, entitled An Act to prevent frauds by incorporated companies."

And the said bill further stated, "That the said Edward R. Biddle, President of said Company, has admitted and declared to the said Robert Stuart, Treasurer of the State of Michigan, that the said Company could not at present pay the said instalment due to this complainant, or any part thereof, or the said debt due from them to the said State of Indiana, or the interest on the same, or the interest due on said large debts in Europe before mentioned, for the want of funds."

And the bill also alleges as follows:

"And this complainant further shows unto your excellency, that this complainant has been informed and verily believes and charges the fact to be, that the said Company, the directors and officers thereof, have since the said Company became insolvent, as hereinbefore

stated, sold, conveyed, assigned and transferred to divers persons and bodies politic and corporate, and especially to the State of Indiana, the estate, effects, choses in action, goods, chattels, rights, credits, lands, and tenements of the said Company, and which sales, conveyances, assignments, and transfers, this complainant is advised and insists, are contrary to the statute in such case made and provided, and are inoperative and void."

And your orator further shows, that the said bill further alleges as follows:

"That the said Company are indebted to Abraham Richards and David Shelden, upon a bond drawn by the said Company, for $35,000, due and payable on the first day of March last past, and which bond, when the same became due and payable, was duly presented for payment, and payment thereof was demanded at the banking-house of the said Company within the usual and proper hours of business, and payment thereof was neglected and refused, and a suit has since been commenced thereon by said Abraham Richards and David Shelden against said Morris Canal and Banking Company." And the said bill also further alleged, "That the said Company have suspended their ordinary banking business for want of funds to carry the same on."

And among the prayers of said bill was one for an injunction against, and the appointment of receivers for, said Morris Canal and Banking Company; and another of said prayers were, "That all sales, conveyances, assignments, transfers, and payments made by the said Company of its estates, effects, choses in action, goods, chattels, rights, credits, moneys, lands, and tenements, since the first day of March last past, may be set aside, and by a decree of this Court declared inoperative and void."

And your orator avers, that said statements so made in said bill of complaint, so drawn and sworn to as aforesaid, were and each of them was true; and your orator charges, that the said State of Michigan had full notice of the insolvency of the said The Morris Canal and Banking Company, and of the fact of its having suspended payments and its ordinary banking business, and that the said Company had no lawful right, power, or authority to make any sale, transfer, or conveyance of any of its property, debts, credits, or effects to the said State of Michigan, and that any conveyance so taken would have been utterly void, as contrary to the provisions of the said act of the State of New Jersey, entitled, "An Act to prevent frauds by incorporated companies," passed the 16th day of February, 1829, and of which the seventh section is in the following words:

"Whenever any such incorporated company shall hereafter become insolvent, or shall suspend the ordinary business of the said company for want of funds to carry on the same, it shall not be lawful for the directors or managers of the said company, or for any officer or agent of the said company to sell, convey, assign, or transfer any of the

estate, effects, choses in action, goods, chattels, rights or credits, lands or tenements of the said company; nor shall it be lawful to make any such sale, conveyance, assignment, or transfer, in contemplation of the insolvency of any such company, and every such sale, conveyance, assignment, or transfer shall be utterly null and void as against creditors; *provided always*, that in case of a bona fide purchase for a valuable consideration before the said company shall have actually suspended the ordinary business of the said company as aforesaid, by any person having no knowledge, information, or notice of the insolvency of said company, or of the sale being made in contemplation of the insolvency of the said company, such purchase shall not be invalidated or impeached."

Which said act, and the said last-mentioned section thereof, or a properly authenticated copy thereof, your orator craves leave to refer to and to make such proof thereof as the rules and practices of this Court shall require; the true construction of which said act and section your orator charges is, that whenever a bank without funds to redeem its notes, and depending upon individual resources and exertions to provide funds, &c., rather than upon the immediate ability of the institution, is insolvent within the meaning of the act, and that the act requires that the bank should be at all times prepared to discharge all demands presented for payment, and it can never be freed from the charge of insolvency upon any supposed ability of realizing from its means enough to pay its debts at a future day.

And your orator further shows, that notwithstanding the act of the State of New Jersey before referred to, and the correct construction put thereon by the said State of Michigan, through its said authorized agent, the Treasurer thereof, and of the utter insolvency of the said Morris Canal and Banking Company, within the knowledge of the said authorized agent of the said State of Michigan, the said Robert Stuart, Treasurer of the said State, and notwithstanding his knowledge that the said Company had no lawful right, power, or authority to sell, convey, assign, or transfer any of its property, debts, credits, or effects, prevailed upon the executive officers of the said Morris Canal and Banking Company, without the knowledge, assent, or approbation of a majority of the Directors of said Canal Company, to agree to assign the said debt due from the said The Long Island Railroad Company to the said Morris Canal and Banking Company, which had, on the 9th day of December, 1840, *been reduced to the sum of about* $40,000, and accordingly the said executive officers, that is to say, the president and cashier of the said Morris Canal and Banking Company, *did, on the said 9th day of December*, 1840, purport to enter into an agreement in the name of the said Morris Canal and Banking Company, with the said Robert Stuart, as such treasurer, and for that purpose did execute and deliver to him in the name of the said State of Michigan, a paper writing called an agreement, signed by the said president and cashier of said Morris

Canal and Banking Company, under the common seal of the said Company thereto affixed, by which the said debt due from the said The Long Island Railroad Company, to the said Morris Canal and Banking Company, and secured by the mortgage aforesaid, *was assigned to the said State of Michigan*, as a collateral security for the debt due from said Morris Canal and Banking Company to said State of Michigan, a copy of which said agreement is hereto annexed, marked Schedule A., and to which your orator craves leave to refer for greater certainty in this behalf.

And your orator further shows, that the said State of Michigan treated the said agreement as a mortgage on the part of the said Morris Canal and Banking Company to said State of the assets and property enumerated in said agreement, and for that purpose caused the same to be recorded in Liber 242 of mortgages, page 600, in the office of the Register of the City and County of New York, by reason whereof your orator charges that the same was notice to all persons and parties of the nature and contents of said agreement; and also, that Abraham G. Thompson, hereinafter mentioned, and the said George B. Fisk, had actual and personal knowledge, information, or notice of said agreement, and of its nature and contents, as had also the said The Long Island Railroad Company, such knowledge, information, or notice as last aforesaid.

And your orator charges, that the said agreement of the said 9th of December, 1840, between the said Morris Canal and Banking Company and the said State of Michigan, so far as concerns the property therein described, was by operation of law but a pledge by the said Morris Canal and Banking Company of said property to said State of Michigan for a pre-existing debt, and the said State of Michigan, irrespective of the statute of said State of New Jersey, entitled "An Act to prevent Frauds by Incorporated Companies," acquired but a special interest in the said property, without power to sell or dispose of the same; but said property was subject to sale by the proper action of any creditors of said Companies, or otherwise to be controlled according to law for the benefit of all the said creditors. And your orator charges, that said Morris Canal and Banking Company, or the receivers of said Company hereinafter mentioned, had no knowledge or notice of the intended sale of the said debt against the said Long Island Railroad Company, or the security therefor by the said State of Michigan. And your orator also charges, that the said sale by the said State of Michigan passed no title to the said debt, or the security therefor to the purchaser of the same.

And your orator further shows, that by a clerical error, "number nine," in said agreement is called "An assignment of a judgment on the Long Island Railroad, &c.," whereas, it was in fact the mortgage hereinbefore referred to.

And your orator further shows, and so charges the fact to be, that the said executive officers of said Morris Canal and Banking Com-

pany, that is to say, the said president and cashier thereof, who so signed the said agreement, were trustees for the stockholders and creditors of said Morris Canal and Banking Company, and held possession of the said assets and property so enumerated and described in said agreement in a fiduciary capacity, without any express or implied right to dispose of the same, or part with the possession thereof, without the assent of the said The Morris Canal and Banking Company, or the persons properly vested with the same, which assent was never given, or in any way obtained; and the said State of Michigan held no right, claim, or title thereto which could be transferred to any person upon any consideration, whether with or without notice of all the facts and circumstances connected with the same, and no purchaser thereof from the said State of Michigan, though paying a valuable consideration for said debt or mortgage, could have or acquire any title thereto as against the creditors of the said Morris Canal and Banking Company, or of any person who might thereafter become, by operation of the laws of New Jersey, legally vested with the same.

And your orator further shows, that on or about the 31st March, 1840, the Legislature of the said State of Michigan passed an act in relation to the five million loan of said State, and, in pursuance of the provisions of said act, the said Robert Stuart, on the 12th of January, 1841, made his report to the Governor of the said State, relating to his action and agreement with said officers of said Morris Canal and Banking Company, an extract from which is as follows:

"SIR:

"By an act of the honorable, the Legislature of this State, approved March 31, 1840, the treasurer 'is required to ascertain whether any portion of the balance becoming due upon the five million loan is not well secured, and to take such measures as he may deem for the interests of the State in relation to the same.'

"In obedience to this authority, and in order promptly to discharge the responsibility thus devolved upon me, I left this city for New York on the 18th of April last, when I ascertained that the bond of the Morris Canal and Banking Company, on which there is yet due to the State about $823,000, had been protested for non-payment of the April instalment, and also that the Company had failed to pay several other creditors previous to that time. On my personal application for the amount due to the State, I was informed that they were then unable to meet their engagements. Of this, from various sources, I was fully convinced. My efforts were therefore immediately directed to obtain adequate security for the ultimate payment of the whole debt. After an unsuccessful negotiation during several weeks for this purpose, they stated to me that their assets, or securities, being mostly embarrassed, it was impossible for them to give such unincumbered security as I demanded, but that being actively engaged in

realizing them, if I would allow them about eight weeks' delay, they hoped to be able to meet my demands."

And your orator further shows, that accompanying said report was a copy of the agreement of the said 9th day of December, 1840, and a copy of said bill in chancery, so sworn to by the said Robert Stuart as aforesaid, which said report of said treasurer, with the papers accompanying the same, that is to say, the copy of said agreement and said bill in chancery, were, on the 14th January, 1841, communicated by the said Governor of said State of Michigan, by special message, to the Senate and House of Representatives of said State, and were printed by George Dawson, printer to said State, and were published by order of said Legislature, among the joint documents of the two houses thereof, as a part of the public records and proceedings of said State, and thereby became and were and are public notice to all persons and parties of the facts and circumstances therein contained, and your orator craves leave to refer to them, and to make such proof thereof as this Court shall direct.

And your orator further shows, that on the said 9th day of December, 1840, the said Morris Canal and Banking Company were indebted over the sum of five millions of dollars, and had, as was truly stated by the said State of Michigan, through the oath of said Robert Stuart, its treasurer, as has hereinbefore been referred to, on the day last aforesaid, suspended its ordinary business and had become insolvent in point of fact, and also within the meaning of the act of the State of New Jersey, hereinbefore referred to as having passed the 16th day of February, 1829, and entitled "An Act to prevent Frauds by Incorporated Companies."

And your orator further shows, that after said pretended assignment from the Morris Canal and Banking Company to the said State of Michigan, and after the said treasurer of said State had reported the same to the Governor of said State, and after the said Governor had communicated the same and the proceedings connected therewith to the Legislature of said State, and by it printed and published, a new effort was made by the agents of said State and the officers of said Morris Canal and Banking Company to obtain additional security from the said The Long Island Railroad Company for said debt, and accordingly the officers of said Morris Canal and Banking Company obtained from the said Railroad Company an additional mortgage, bearing date about the 6th day of March, 1841, upon all their several strips, pieces, or parcels of land, in counties of Queens and Suffolk, on which the railroad is built and may be built, with the rails laid down thereon, or thereafter to be laid, and the rights and privileges appertaining thereto, and also all the land in said counties belonging to said parties thereunto of the first part, and the depots, car-houses, engine-houses, shops, stables, and all other buildings thereon erected, and the rights, and privileges, and appurtenances

thereto belonging; and that said mortgage was on 26th April, 1841, assigned to said State of Michigan by the said officers of said Morris Canal and Banking Company, as a further security for said debt so due to the State of Michigan, without the authority of the directors thereof, though the said assignment fraudulently represents that the same was made in pursuance of a resolution of the Board of Directors of said Company, and said mortgage and the assignment thereof were recorded in the office of the clerk of the county of Kings, April 28, 1841, in lib. 68 of mortgages, p. 417, a copy of which said assignment from said Morris Canal and Banking Company to said State of Michigan is hereto annexed, marked Schedule B.; and your orator craves leave to refer to the original thereof in the hands or under the control of said Abraham G. Thompson, and which your orator prays may be discovered and produced by him when the same shall be discovered and produced, or to a duly authorized copy of said record ready to be produced and proven by your orator when and as this Court shall direct.

And your orator further shows, that on or about the 12th day of May, in the year 1841, Abraham Richards and David Selden, of the City of New York, recovered a judgment in the Supreme Court of the State of New York, against the Morris Canal and Banking Company, for about the sum of $\$38{,}631\frac{30}{100}$ damages, and costs, upon a bond or obligation made by said Company, and which fell due and was protested for non-payment about the first day of March, 1840, and that, on the seventh day of September, of the same year, the same plaintiffs also recovered against the same Company judgment in the Supreme Court of the State of New Jersey, in pursuance of the laws of said State, for the sum of $\$39{,}529\frac{49}{100}$, and that on the day last mentioned, Henry Yates, Thos. G. Talmadge, and Wm. C. Noyes, recovered a judgment in the last-mentioned court against the said Company, for the sum of $11,245 19, which said last-mentioned judgment was subsequently assigned to the said David Selden, and that the said Richards and Selden, on the 28th of December, 1841, recovered in one of the said courts of New Jersey, of competent jurisdiction and authority under the laws of said State, a certain other judgment against the said Morris Canal and Banking Company for the sum of $16,767 86, and also, that, at about the same time, other judgments were recovered, in the courts of said State, of like authority and jurisdiction, against said Morris Canal and Banking Company by other parties, which were subsequently assigned to the said Richards and Selden, or said David Selden, the records of which said judgments are now on file in said several courts, the proof whereof your orator craves leave to make at the proper time, on which said judgments there now remains due the sum of $50,000, or thereabouts.

And your orator further shows, as he has before shown, that the said Morris Canal and Banking Company had for a long time before

the recovery of said judgments been utterly insolvent, and had suspended its ordinary business, and its business and affairs had at the time last stated become so desperate, that at a meeting of its directors, on the 24th day of December, 1841, a committee from said board, consisting of James B. Murray, Abraham Kinney, and the said George B. Fisk, were appointed to investigate its said affairs, and to make report thereon; and the said committee immediately entered upon the duties of said appointment, and on the third day of November, 1841, they reported the result of their investigations, accompanied by a schedule of the assets of said Company and its liabilities, for the purpose of proving the utter insolvency of said Company; and among other things, the said committee said that "the bank never recovered from the transactions of 1836 and 1837, when the prospects of large profits caused by dealing in foreign and domestic exchanges, entailed upon it losses which have proved to be the primary cause of its present condition."

And your orator further shows, that the said Abraham Richards and David Selden, some time in the latter part of the year one thousand eight hundred and forty-one, filed their bill of complaint in the Court of Chancery of the State of New Jersey, duly instituted and of competent authority and jurisdiction under the laws of said State, against the said Morris Canal and Banking Company, setting forth the insolvency of said Company, and praying for an injunction and receiver, under and by virtue of an Act of the Legislature of said State of New Jersey, hereinbefore alluded to, and entitled "An Act to prevent Frauds by Incorporated Companies," passed the sixteenth day of February, one thousand eight hundred and twenty-nine, one section of which said Act is in the following words, viz.:

"It shall and may be lawful for the Court of Chancery, if the circumstances of the case and the ends of justice require it, at the time of ordering said injunction, or at any other time afterwards during the continuance of the said injunction, to appoint a receiver or receivers, or three trustees with full power and authority to demand, sue for, collect, receive, and take into their possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description belonging to the said Company at the time of their insolvency or suspension of business as aforesaid; and to sell, convey, or assign, all the said real or personal estate; and to pay into the Court of Chancery all the moneys and securities for money arising from such sales, or which the said receiver or receivers, or trustees, shall collect or receive by virtue of the authority vested in them, to be disposed of by the said receiver or receivers, or trustees, from time to time under the orders of the said court among the creditors of the said Company; first making to the receiver or receivers, or trustees, such reasonable compensation as the Chancellor may deem just and proper, and also deducting the cost of the proceedings

in the said Court," which said section your orator craves to make part of this bill of complaint, and give such proof thereof, as well as the said Acts of New Jersey, of which said section forms a part, as may be consistent with the rules and practice of this court.

And your orator further shows, that such proceedings were had at the suit of said Abraham Richards and David Selden, in said Court of Chancery of said State of New Jersey, against said Morris Canal and Banking Company, that on the 29th day of January, in the year 1842, a decree was entered therein, of which the following is a copy:

In Chancery of New Jersey.

Between ABRAHAM RICHARDS, DAVID SELDEN, Complainants, and THE MORRIS CANAL AND BANKING COMPANY, Defendants. } On Bill, &c.

Upon opening the matter to the court by Asa Whitehead, of counsel with the complainants; and it appearing to the Chancellor that the hearing of the application in this case for the issuing of an injunction and the appointment of receivers, in pursuance of the prayer of the complainant's bill, has been postponed from time to time, by agreement of parties, till this day, being the twenty-ninth day of January, in the year of our Lord 1842; and upon reading the complainant's bill of complaint, and the affidavits thereto annexed, by which the Chancellor is satisfied of the sufficiency of the application made by the complainants, and also of the truth of the facts and allegations therein contained; and it further appearing to the satisfaction of the Chancellor, the said The Morris Canal and Banking Company has become insolvent, and is not about to resume its business in a short time with safety to the public and advantage to the stockholders: It is thereupon, on this twenty-ninth day of January, in the year of our Lord 1842, aforesaid, at a regular term of the Court of Chancery, holden at Trenton, ordered, adjudged and decreed, by William Pennington, Governor and Chancellor of the State of New Jersey, that a writ of injunction do issue out of and under the seal of this court, directed to the said The Morris Canal and Banking Company, and its officers and agents, thereby restraining the said Company, and its officers and agents, from exercising any of the privileges or franchises granted by the Act incorporating the said Company, or by any supplement to such Act or Acts in addition thereto, and from collecting and receiving any debts, or from paying out, selling, assigning, or transferring any of the estate, money, funds, lands, tenements, or effects of the said Company, until this court shall otherwise order.

And it further appearing to the Chancellor that the circumstances of this case and the ends of justice require it, the Chancellor doth hereby appoint Dudley S. Gregory, Elias B. D. Ogden, and Stephen P. Brittan, Esquires, receivers, with full power and authority to demand, sue for, collect, receive, and take into their possession, all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description belonging to the said The Morris Canal and Banking Company, at the time of their insolvency or suspension of business, as set forth in said bill, and to sell, convey, and assign all the said real and personal estate, and to pay into this Court all the moneys and securities for money arising from such sales, or which the said receivers shall collect or receive by virtue of the authority vested in them, to be disposed of by the said receivers, from time to time, under the order of this Court, among the creditors of the said Company, first making to the receivers such reasonable compensation as the Chancellor may deem just and proper, and also deducting the costs of the proceedings in this Court. That the said receivers shall first take and subscribe the oath or affirmation directed in and by the act entitled 'An Act to prevent frauds by Incorporated Companies,' and that they shall be deemed and taken to be receivers for the creditors and stockholders of the said Company, with full power and authority, whenever they shall deem it proper, to institute suits in law or equity in their name, as receivers as aforesaid, for the recovery of any estate, real or personal, debts, rights in action, damages and demands, whatsoever and wheresoever, existing in favor of the said Company at the time of its insolvency or suspension of business as aforesaid, or accruing subsequent thereto; and that the said receivers be also invested with all the powers and authority given and granted in and by the act last mentioned, and have liberty to apply to this Court as occasion may require. And all other directions concerning the said receivers are to be subject to the further orders of this Court.

"WM. PENNINGTON, *C.*"

By which said decree your orator insists and charges that all the property, effects, rights of action, and assets, which were of said Company, both in law and equity, at the time of its first becoming insolvent, were invested in said receivers, with full power in the same to sell, dispose of, bargain for, and part with, as in the discretion of said receivers shall be deemed meet and proper; and that upon the sale by said receivers of such property, effects, rights of action, and assets, the vendee or vendees of said receivers took and was or were possessed of all the rights therein that belonged to said receivers in relation thereto, and that among the effects, rights of action, and assets, so conveyed to and possessed by said receivers, was the debt due said Morris Canal and Banking Company by the

said The Long Island Railroad Company, hereinbefore referred to, and said securities for the same.

And your orator further shows, that the said Dudley S. Gregory, named in the said order, declined to accept the said appointment of receiver, and a few days thereafter Alexander C. M. Pennington, Esq., was appointed in his place, who accepted the said office, as did also the said Elias B. D. Ogden, and Stephen P. Brittan, who took the oath prescribed by law, who then and there became and were possessed of and invested with, in pursuance of the said statute and the order above set forth, of the said Court of Chancery, founded thereon, of all the property, real, personal, and mixed, and of the effects and assets, belonging to the said Morris Canal and Banking Company, among which was the debt due said Canal Company from the said The Long Island Railroad Company, before and herein referred to, and all the property, right, title, and interest, of the said Company therein, at the time of their said insolvency or suspension of payments hereinbefore mentioned, and the security therefor.

And your orator further shows, and so charges the fact to be, that the making of said decree was a matter of public notoriety, and the appointment of said receivers was published in the newspapers in the State of New Jersey and in the city of New York, and the operation of said decree was a transfer of the assets and property referred to therein, to such receivers, as bona fide purchasers thereof, for a valuable consideration, and arrested and suspended the right of any and all persons who had acquired possession of any of the property of said Morris Canal and Banking Company, after it had so become insolvent, from transferring the same, and especially the said debt so due to it from the said The Long Island Railroad Company, and among other reasons, because the assent of said Company to transfer the same had never been obtained, and any assignee or purchaser thereof, subsequent to that time, could not become a bona fide purchaser thereof, even without notice of the transaction hereinbefore referred to. And your orator further charges, that the appointment of said receivers was an equitable writ of execution against all of said assets of said Morris Canal and Banking Company.

And your orator further shows, that it was a long time after the appointment of said receivers before they ascertained that the said State of Michigan had obtained the possession of the mortgages hereinbefore referred to; and the said receivers had no notice of the intention of said State to dispose of the same, or of any action on its part to foreclose the equity of redemption of the said Canal Company therein.

And your orator further shows, that on the 17th February, 1842, the said State of Michigan duly passed an act entitled "An Act to provide for the collection of certain assets transferred to the State, and for other purposes," the first section of which is in the following words, viz.:

"That the Auditor-General, State Treasurer, and Secretary of State for the time being, be, and the same are hereby, constituted trustees in behalf of the State, to take charge of the assets assigned to the State by the Michigan State Bank, and such other assets or property as may have been or shall hereafter be conveyed to the State in payment of other debts, or become the property of the State as collateral security, securities, or otherwise." That, by the third section of said act, it is provided said trustees "shall have power to lease, sell, or convey, any assets or property assigned to the State as aforesaid;" which said act your orator prays may be deemed a part of this his bill of complaint, and proof of which your orator also craves liberty to make, as may be necessary.

And your orator further shows, that notwithstanding the knowledge of the said Long Island Railroad Company, and especially its then President, the said George B. Fisk, that the said State of Michigan had no legal title to or lawful authority to control the said debt so due to said Morris Canal and Banking Company, and the said receivers thereof, yet at the solicitation of the said State of Michigan, or its proper officers hereinbefore referred to, the said The Long Island Railroad Company, by the said George B. Fisk, its President and active manager, did, on the 8th day of July, 1842, receive a surrender of the mortgage on the chattels of the said Long Island Railroad Company, hereinbefore mentioned, from the said State of Michigan, and execute to the said State of Michigan a new mortgage on the same chattels referred to in the said mortgage of the said third day of November, 1839, and which said two latter mortgages were signed by the said George B. Fisk, as President of said Long Island Railroad Company, by order of the board of directors thereof, the said George B. Fisk well knowing that said State of Michigan had no right to receive the same, and that the said mortgage and the debt secured thereby of right belonged to the said receivers of said Morris Canal and Banking Company, hereinbefore mentioned.

And your orator further shows, that some time in the spring of 1843, Abraham G. Thompson, of the city of New York, in behalf of himself and the said George B. Fisk, entered into negotiations with Charles G. Hammond, Esquire, the then Auditor-General of the said State of Michigan, the said Abraham G. Thompson and the said George B. Fisk, well knowing all the circumstances attending the said debt against the said The Long Island Railroad Company, and the circumstances under which the same was assigned to the said State of Michigan by the officers of the said Morris Canal and Banking Company, and the subsequent renewal thereof by said Long Island Railroad Company for the purchase of the said debt, and the security therefor; and the said Abraham G. Thompson, from his familiarity with the concerns of the said The Long Island Railroad Company, and from his connection therewith, heard and knew, as well from the knowledge derived from said George B. Fisk, the President thereof,

as from other causes and sources, that the said debt was perfectly good and well secured, and the means of said Railroad Company were perfectly adequate to the payment of the same; which negotiations resulted in an agreement to this effect: that is to say, that a certain notice of sale at public auction should be given, and be published in certain newspapers in the city of New York, for a specified time, by authority of said State of Michigan, with the view of foreclosing any equity of redemption of the said Morris Canal and Banking Company, and if the said debt and security should sell for less than the sum of $20,000, the said Abraham G. Thompson, and his associate, not made known, were to pay that sum to said State of Michigan, though the same should be bid off for a less sum by said State of Michigan; and in case the same should sell at said public auction for more than the said sum of $20,000, the excess should enure to the benefit of the said State of Michigan; or, in other words, said Thompson and his coadjutor were to buy the same at public auction for $20,000, if the same should not bring more to any other bidder. And your orator charges, that in pursuance of said agreement, the said notice of sale was given, and on the 24th day of May, in said year 1843, said sale took place in pursuance of said agreement and notice, and the said debt and said securities therefor were set up at public auction, and bid off by an agent of the said State of Michigan, for the said sum of $20,000, and by an arrangement in pursuance of a previous understanding to that effect with the said State of Michigan, the said Abraham G. Thompson, for himself and his said associate, took the said bid; and in pursuance of the agreement in respect thereto, the said State of Michigan, by its trustees, in pursuance of the Act of the Legislature of said State hereinbefore referred to, that is to say, by Charles G. Hammond, Auditor-General, John J. Adam, Treasurer, and R. P. Eldridge, Secretary of State of said State of Michigan, on the 30th day of May, in said year 1843, conveyed the said debt against the said The Long Island Railroad Company, and the security therefor hereinbefore referred to, to the said Abraham G. Thompson, in consideration of the said sum of $20,000, and which was recorded the 7th of June, 1843, in the office of the Clerk of the County of Kings, in lib. 71 of mortgages, page 91, and a copy of which said conveyance is hereto annexed, marked Schedule C., the original of which is in the possession or under the control of the said Abraham G. Thompson, and which your orator prays may be discovered and produced by him.

And your orator avers and charges, that the said Abraham G. Thompson well knew, or had been informed, when he made the said negotiation with the said trustees of the said State, and when he took a transfer of the said debt, and the securities therefor as aforesaid, that the said State of Michigan had become possessed of the said debt so secured by said bond and mortgages in contravention of the laws of the State of New Jersey, and was an illegal holder of the

same, and had no lawful right, power, or authority to transfer the same, and could give no lawful title thereto. And your orator further states, that he has been informed, believes, and charges, that the said Abraham G. Thompson bought the said debt and securities upon speculation at the small sum of fifty per cent. on the dollar, of the face of the said bond and mortgages, and that he intended to take, and did take, the chances of realizing the whole sum due on the same, in case the title thereto should prove to be good in the said State of Michigan, or the risk of losing the whole sum paid by him, in case the title to the said debt and mortgages of said State of Michigan should prove worthless; the said Abraham G. Thompson having exacted from the said State of Michigan a covenant that the whole sum of $40,000 was due on said bond and mortgages: and the said State of Michigan did in fact make and execute such covenant, as will fully appear by reference to said conveyance.

And your orator further shows, that soon after the said purchase as aforesaid, the said Abraham G. Thompson called on the said The Long Island Railroad Company in regard to said debt so due from the said Long Island Railroad Company, and the securities therefor, and proposed to surrender up the old securities so far as it related to the mortgage upon the cars and other chattels of said Company hereinbefore referred to, and to take a new mortgage in his own name therefor, he, the said Thompson, well knowing that he had no legal title thereto, but with a view of defrauding the bona fide creditors of said Morris Canal and Banking Company, and believing that his fraudulent design could be accomplished by obtaining from said Long Island Road Company a new security in his own name, and the said George B. Fisk, from his interest in the said purchase with the said Abraham G. Thompson, being willing to substitute a new mortgage in the name of said Abraham G. Thompson, for the old one in the name of said State of Michigan; and accordingly on the 15th day of June, in the said year 1843, the said substitution of said security was assented to by the said Long Island Railroad Company, through the said George B. Fisk, its President and active manager, and a paper writing, called a mortgage, was thereupon executed on the day last aforesaid, by the said Long Island Railroad Company, to the said Abraham G. Thompson, reciting in effect as follows:

"Whereas, on the sixth day of March, in the year 1841, the Long Island Railroad Company did execute to the Morris Canal and Banking Company a mortgage on the personal property hereinafter mentioned, and bearing date on that day, to secure the payment of the sum of $40,000, as mentioned in a certain bond referred to in said mortgage, bearing even date therewith, in the penalty of $80,000, conditioned for the payment of the said sum of $40,000, with interest on demand."

"And whereas, the said mortgage and bond was duly assigned to

the State of Michigan by the said Morris Canal and Banking Company on or about the 26th day of April, 1841.

"And whereas, the said State of Michigan did, on or about the 8th day of July, 1842, surrender to the Long Island Railroad Company the said original mortgage, and receiving one from said Railroad Company in substitute thereof, but subject to all such rights and liabilities as the said original mortgage was subject to.

"And whereas, the said mortgage and bond to the said State of Michigan was duly assigned, by its lawful and proper officers, to Abraham G. Thompson, on or about the 30th day of May, 1843.

"And whereas, the said Abraham G. Thompson is desirous of surrendering the said mortgage and receiving one from the said Long Island Railroad Company in substitution thereof, but subject to all rights and liabilities as the said original mortgage was subject to. Now, therefore, these presents witnesseth."

And which said paper writing proceeds in the form of a mortgage upon all the described goods and chattels enumerated in the said mortgage of the 3d of November, 1839, to the said Morris Canal and Banking Company, hereinbefore set forth; that a copy of said mortgage was duly filed in the office of the clerk of the county of Kings, on the 4th May, 1844, and the original is in the possession or under the control of the said Abraham G. Thompson, and that said mortgage has been renewed of record according to law, and on the 5th day of February, 1847, the following memorandums appear on said renewal, so filed in said office of said clerk.

"New York, February 5, 1847. I hereby certify that I hold a mortgage upon the real estate of the Long Island Railroad Company, also a chattel mortgage (the within being a copy) as collateral security for their indebtedness to me, by bond, the principal of which amounts to $40,000 00

"Back and accruing interest on the 1st May next will amount to 11,235 02

Together, ... 51,235 02

"Of the above there will be due and payable on the 1st May next, of principal, ... 10,000 00

"Also, of interest, same day, ... 2,080 02

$12,080 02

"The remainder, with accruing interest, will be due and payable at stated periods until 1st May, 1850, the terminus. This notice to commence its year the 15th June next, it being the terminus of the chattel mortgage now on file, its predecessor."

And on which said copy there was the further memorandum on the back thereof—

"*Memorandum.*

"Original mortgage dated 15th June, 1843.

"Additional security dated 6th December, 1845."

This mortgage commencing with the expiration of its predecessor, 15th June, 1847, and continuing to 15th June, 1848. And which said copy of said mortgage purports to have been filed in the office of said clerk on 5th February, 1847.

And your orator further shows, that at the request of the said Abraham G. Thompson, the said Long Island Railroad Company, as a further security for the said debt of $40,000, and the back and accruing interest thereon, and to provide for the diminution of the former security evidenced by said chattel mortgage, by reason of the use and the wear and tear of the property included in the same, the said Long Island Railroad Company executed, on the 6th day of December, 1845, to the said Abraham G. Thompson, another mortgage on the following chattels of said Long Island Railroad Company, that is to say: on engines called Abner Chichester, John A. King, Elihu Townsend, Brooks, Fisk, Henry Ruggles, Jacob Little, Derby, Edwin Post, Boston, Crib, with one other engine not named, together with sundry cars, and other chattels; the original of which mortgage was filed in the office of the said clerk of said county of Kings, on the 8th day of said month of December, 1845.

And your orator further shows, that when the said Abraham G. Thompson took the said mortgage in his own name, and dated the said 15th day of June, 1843, he also received the bonds of said Company for said $40,000, the face of said debt, dated the 1st day of May, 1843, payable, one-fourth on 1st of May, 1847, and one-fourth on the same day of each succeeding year, with interest at the rate of seven per cent. per annum, and that for the interest due on said debt prior to the said 1st day of May, 1843, the said Thompson received the bonds of said Company payable in seven years, with interest at the said rate of seven per cent., which said interest amounts to about the sum of $10,000.

And your orator further shows, that that interest has been paid by the said Railroad Company, on the said debt of $40,000, and the back interest thereon from the said 1st day of May, 1843, and the said Company have also paid the said sum of $10,000, one-fourth of said principal sum due on the said 1st day of May, 1847, with a full knowledge of all the facts and circumstances as hereinbefore stated.

And your orator further shows, that on the 17th day of December, 1844, your orator bargained with and purchased of the said Abraham Richards and David Selden the said judgments against the said Morris Canal and Banking Company, as well as for an additional one, in which Wm. S. Nichols appears as plaintiff on the record, also against the said Morris Canal and Banking Company, recovered in a court of competent jurisdiction and authority, in the said State of New

Jersey, docketed about the 12th of November, 1841, for the sum of five hundred and forty-three dollars and eighty-four cents, in which said purchase your orator then had the one-fourth interest, but your orator took a conveyance for the same in the name of Skeffington Sanxay, Esquire, of the city of New York, counsellor at law, but which said judgments are now solely owned by your orator, he having the entire interest and right of property therein, and the said Skeffington Sanxay has conveyed the same to your orator, and in reference to which your orator further says, that the same were duly proved before said receivers, as a debt due from said Morris Canal and Banking Company, and that the Court of Chancery of New Jersey decided, in reference thereto, that said judgments were and are entitled to, and have by law, a priority of payment from the funds and assets in the hands of said receivers of said Morris Canal and Banking Company; and by virtue of said decision, the said receivers have applied and paid on said judgments over the sum of ten thousand dollars, and in part payment and satisfaction of the former balance due on the same; and, as a further payment on said judgments, the said receivers, by order of the said Court of Chancery of said State of New Jersey, duly and properly obtained and entered, assigned, on or about the 15th day of November, 1845, to said Skeffington Sanxay, the debt hereinbefore referred to, due the said Morris Canal and Banking Company from the said The Long Island Railroad Company, and which the said Skeffington Sanxay subsequently assigned to your orator, he having for a long time before the day last aforesaid held the same as the agent and trustee of your orator.

And your orator further shows, that Digby V. Bell, Esq., is the present Auditor-General, George B. Cooper, Esq., is the present Treasurer, and Gideon A. Wittemore, Esq., is the present Secretary of State of the said State of Michigan, who are, by virtue of the act of the Legislature of said State of Michigan before referred to, the proper representatives of said State in the matters hereinbefore referred to; but your orator hereby assents, that said State shall appear in this suit as a defendant, and litigate the rights of your orator, if said State choose so to do.

And your orator further shows, that he has caused the said Abraham G. Thompson, George B. Fisk, and the said The Long Island Railroad Company, to be addressed in a friendly manner, and requested to account to your orator for the said debt of the said Long Island Railroad Company for the said sum of $40,000, formerly due to the said Morris Canal and Banking Company, and the securities for the payment of the same, as hereinbefore referred to, and the interest thereon, or to account to your orator for the product thereof and the interest thereon, amounting now to about the sum of $65,000, which they ought to have done, but which they wholly refuse to do.

To the end therefore, that the said Abraham G. Thompson, George

B. Fisk, Digby V. Bell, George B. Cooper, Gideon A. Wittemore, and the said The Long Island Railroad Company may, that is to say, the said Abraham G. Thompson, George B. Fisk, Digby V. Bell, George B. Cooper, and Gideon A. Wittemore, severally (without oath, the same being hereby waived), and the said The Long Island Railroad Company, under its corporate seal, true, full, direct, and perfect answers make to all and singular the matters hereinbefore stated and charged, and as fully and particularly as if the same were here repeated, and they thereto severally and specifically interrogated; and your orator prays, that the said Abraham G. Thompson may, by a decree of this Court, be compelled to assign over to your orator the said bonds and mortgages taken for the said original debt of $40,000, and the interest thereon of the said The Long Island Railroad Company, or any other securities or evidences of debt, taken therefor from the said The Long Island Railroad Company, as well for principal as interest, and that he or the said George B. Fisk, one or both, may be decreed to pay to your orator all the moneys, if any, received on said debt, or any interest thereon, from the said The Long Island Railroad Company, or in case the said Thompson shall have parted with the said mortgage, concerning which your orator is ignorant, that he may be decreed to pay to your orator the value thereof in cash, at the time of the disposal thereof, or that the said Long Island Company may be decreed to account to your orator for the said principal sum of $40,000, and the interest thereon from the said 6th day of March, 1841.

And that your orator may have such other and further relief as may seem agreeable to equity and good conscience.

May it please this Court to grant unto your orator a writ of subpœna, issuing out of and under the seal of this Court, directed to the said Abraham G. Thompson, George B. Fisk, Digby V. Bell, as Auditor-General, George B. Cooper, as Treasurer, and Gideon A. Wittemore, as Secretary of State of the State of Michigan as aforesaid, and the said The Long Island Railroad Company, commanding them at a certain day, and under a certain penalty, to be and appear before this Court, and answer the bill in this cause, and to stand to and abide such order and decree as may be made in the premises.

J. HOYT.

S. SANXAY, *Solicitor for Appellants.*
GEORGE CURTIS, *Of Counsel.*

Schedule A., referred to in this Bill of Complaint.

Memorandum of an agreement entered into the 9th day of December, in the year 1840, between "the State of Michigan," by Robert Stuart, Treasurer thereof, and the "Morris Canal and Banking Company," a body corporate of the State of New Jersey.

Whereas, the State of Michigan hold a bond against the said Morris

Canal and Banking Company, for the sum of one million, forty-eight thousand five hundred and sixty-two dollars and fifty cents, dated the 13th day of March, 1839, on which there remains still unpaid for principal the sum of seven hundred and thirty-seven thousand five hundred dollars, and for interest thereon up to this date the sum of eighty-five thousand seven hundred and ninety-five dollars and eighty-three cents, making the whole sum due this day, on said bond from said Company to said State, the sum of eight hundred and twenty-three thousand two hundred and ninety-five dollars and eighty-three cents, which sum the said Company is unable to pay at this time, and in instalments in said bond.

Now, therefore, it is mutually agreed between the said parties, as follows:

The Morris Canal and Banking Company agree to deliver over to the State of Michigan, or the authorized agent thereof, as collateral security for the payment of the sum of eight hundred and twenty-three thousand two hundred and ninety-five dollars and eighty-three cents, with interest thereon from this date, the following property and securities, viz.:

No. 1. An assignment of a mortgage, executed by the Mount Hope Mining Company, a body corporate of the State of New Jersey, to the Morris Canal and Banking Company, on their mineral tract of about eight hundred acres, and their mineral right to about eight hundred acres adjoining, situate in the county of Morris, State of New Jersey, for fifty thousand dollars.

No. 2. A bond and mortgage executed by the Morris Canal and Banking Company, on the property purchased of Nathaniel Saxton, situated on the Morris Canal, in Morris and Warren Counties, containing eleven hundred and fifty-two $\frac{76}{100}$ acres, for the sum of twenty thousand dollars.

No. 3. A bond and mortgage executed by the Morris Canal and Banking Company, to the State of Michigan, on their two farms in the town of Pequanock, county of Morris, State of New Jersey, consisting of three hundred and fifteen acres, with saw mill, two good dwelling-houses, and other improvements, for ten thousand dollars.

No. 4. An assignment of a bond and mortgage, executed by J. Serinus, T. F. Pierson, and Stiles Williams, to the Morris Canal and Banking Company, on lands situate in the county of Luzerne, and State of Pennsylvania, on the head waters of the Lehigh River, for twenty-one thousand dollars, the balance remaining due, on which is ten thousand dollars or more.

No. 5. A bond and mortgage executed by the Morris Canal and Banking Company, to the State of Michigan, on their banking-house, and two lots of land, situate on the corners of Grand, Green, and Sussex Streets, Jersey City, for the sum of twenty thousand dollars.

No. 6. A deed of conveyance from George Griswold to the State of Michigan, of the banking-house and lot of ground No. 45 William Street, in the city of New York, for one hundred thousand dollars.

No. 7. A deed of conveyance executed by the Little Schuylkill and Susquehanna Railroad Company to the State of Michigan, for a tract or tracts of land purchased by them from C. Cox, of Philadelphia, containing about one hundred acres, situate on the head waters of the Little Schuylkill River, at and near the junction of Northampton, Luzerne, and Schuylkill Counties, in Pennsylvania, eight thousand dollars.

No. 8. An assignment of the residue of the debts, bills receivable, stocks, bonds, and all securities now held by the American Exchange Bank, and given to the said Bank by the Morris Canal and Banking Company, in liquidation of a stock transaction, 1st March, 1839, after payment of said debt of the American Exchange Bank, twenty thousand dollars.

No. 9. An assignment of a judgment on the Long Island Railroad Company's railroad cars, with fixtures, &c., for forty thousand dollars.

No. 10. A bond of the Little Schuylkill and Susquehanna Railroad Company, to be hereinafter secured by mortgage on their railroad if desired, the notes of said Company for amount thereof having been delivered, in the meantime, until the bond can be procured, thirty-three thousand dollars.

No. 11. Four hundred and forty shares, of fifty dollars each, in the Cumberland Valley Railroad of Pennsylvania, twenty-two thousand dollars.

No. 12. An obligation of the Morris and Sussex Manufacturing Company, of Stanhope, New Jersey, to deliver iron in New York, 1st January, 1842, to the value of forty-five thousand dollars.

No. 13. An obligation of the Morris and Sussex Manufacturing Company, of Stanhope, New Jersey, to deliver iron in New York, 1st July, 1842, to the value of forty-five thousand dollars.

No. 14. An obligation of the Morris and Sussex Manufacturing Company, of Stanhope, New Jersey, to deliver iron in New York, 1st January, 1843, to the value of sixty thousand dollars.

No. 15. An obligation of the Morris and Sussex Manufacturing Company, of Stanhope, New Jersey, to deliver iron in New York, 1st January, 1843, to the value of twenty-seven thousand four hundred dollars.

No. 16. An obligation of Bible, Chambers & Co., of Danville, Pennsylvania, to deliver iron in New York, 1st January, 1843, to the value of twenty-seven thousand five hundred dollars.

No. 17. An assignment of a debt due from Theodore Romeyn, to the said Morris Canal and Banking Company, with collateral security, estimated at eleven thousand dollars.

The parties of this agreement, mutually agree with each other,

that the said properties and securities, are, and shall be considered as received on the following terms, and subject to the following agreement:

First. Of the securities enumerated above, those numbered 3, 4, 5, 9, 11, amounting together to the sum of one hundred and twelve thousand dollars, shall be returned to the Morris Canal and Banking Company, upon their furnishing to the State of Michigan, in exchange, an assignment of a valid, unincumbered right to their claim for advances on the script of the Apalachicola Land Company, of which George Griswold and Lewis Curtiss are the present trustees, together with said script and the requisite documents, to transfer the same to the said State, estimated at one hundred and ten thousand dollars.

Second. The said Morris Canal and Banking Company agree that, unless the substitution of the claim for advances on Apalachicola script, and the script itself, for the properties and securities mentioned above, as 3d, 4th, 5th, 9th, 11th, shall be made and tendered to the State of Michigan, within six months from this date, the said latter property and securities, shall remain permanently with the State of Michigan under this agreement, the Morris Canal and Banking Company shall then add thereto of other securities, twenty thousand dollars.

Third. The Morris Canal and Banking Company shall pay to the State of Michigan, the sum of one hundred thousand dollars on or before the first day of January, 1844, on account of the principal and interest upon the said sum of eight hundred and twenty-three thousand two hundred and ninety-five dollars and eighty-three cents, and annually thereafter of the first day of January, in each year, a like sum of the same, until the said debt and the interest thereon shall be fully paid; such payments, and all other payments made thereon, however, always to be applied in the first place, so far as shall be necessary for that purpose, to the satisfaction of said interest which shall have accrued to the time of such payment respectively.

Fourth. Numbers 8, 12, 13, 14, 15, and 16, of the above securities and property are to be realized as they become due, and the avails to be applied on the said debt and interest; the Morris Canal and Banking Company, however, are to have the right to negotiate the sales of the iron, subject to the approval of the authorized agent of the State of Michigan; but the contracts of sale are to be executed and carried into effect by said agent, and the proceeds received by him.

And the Morris Canal and Banking Company shall procure the assent of the Morris and Sussex Manufacturing Company, as also the assent of Bible, Chambers & Co., of Danville, Pennsylvania, to the assignment of the obligations mentioned in said numbers, 12, 13, 14, 15, and 16, to the State of Michigan, and their agreement to deliver said iron to the authorized agent of said State, instead of the Morris Canal and Banking Company.

Fifth. The properties and securities, except numbers 8, 12, 13, 14, 15, and 16, delivered to the State of Michigan under this agreement, are to be returned to the said Morris Canal and Banking Company, whenever they may require the same, upon the furnishing of other securities to the said State not inferior in value, upon a fair and just estimate of the same, and that to facilitate this exchange of the securities which it is the intent and desire of both parties to do to the fullest extent which may be practicable for the benefit of the said Morris Canal and Banking Company, but not to the diminution of the security of the said State of Michigan, all the said property and securities delivered under this agreement, shall be placed in the safe keeping of some authorized agent of the State of Michigan, residing in the city of New York, with full power and discretion to him to make the exchange of securities in the same manner as the State itself would do, whenever application to this effect shall be made by said Morris Canal and Banking Company, and on payment being made of liquidation of the said debt and interest, a pro rata amount of securities shall be returned; this, however, only to commence when the principal and interest shall be reduced by payments within the value of the property and securities delivered to the State of Michigan under this agreement.

Sixth. The State of Michigan shall forbear any demand, suit, or process whatsoever, against the Morris Canal and Banking Company on account of their said debt and the interest thereon, until the first day of January, 1844, already mentioned, and upon the payment of one hundred thousand dollars at that time, and annually thereafter, as hereinbefore provided, shall, in like manner forbear altogether any legal proceedings against said Company, for said debt and interest thereon.

But in case of the failure of the Morris Canal and Banking Company to comply with the terms of this agreement, or to make such annual payments of one hundred thousand dollars, the State of Michigan shall have right to sell or otherwise realize in cash, out of said property and securities, or any of them, or collect from the said Morris Canal and Banking Company an amount sufficient to provide for the payment or payments which there shall have been a failure to make, or take such other proceedings against said Company, as said State may deem proper; and in case the title of any of the said property or securities, or any which may be substituted in their place under this agreement, shall prove to be defective or incumbered, then the said State of Michigan shall have a right to proceed and collect of the said Morris Canal and Banking Company the amount of the property and security, the title to which may have so proved defective or incumbered, unless the said Morris Canal and Banking Company shall, within ninety days after notice thereof, render such title perfect and unincumbered, or give other good securities in lieu thereof.

And the said Morris Canal and Banking Company agree to advance and pay to the State of Michigan, on the execution of this agreement, the sum of two thousand and ten dollars, which is to be applied towards the payment of the last instalment of the said debt due the said State, and which payment is made to place the said treasurer in funds to meet his expenses and those of the counsel employed by him for said State.

In witness whereof, the Morris Canal and Banking Company have hereunto affixed their corporate seal, and caused this instrument to be signed by their president and attested by their cashier, and signed also by the treasurer of the State of Michigan on behalf of said State.

(Signed)

E. R. BIDDLE, *President*, [L. S.]
Attest, ISAAC GIBSON, *Cashier*.
ROBERT STUART,
Treasurer of State of Michigan.

In presence of
HENRY E. DAVIS.

Schedule B., referred to in this Bill of Complaint.

Know all men by these presents, That we, the Morris Canal and Banking Company, parties of the first part, in consideration of the sum of forty thousand dollars, lawful money of the United States, to them in hand paid by the State of Michigan, of the second part, at or before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, a certain Indenture of Mortgage, bearing date the sixth day of March, one thousand eight hundred and forty-one, made by the Long Island Railroad Company upon certain real estate therein specified, to secure the sum of forty thousand dollars, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest, to have and to hold the same unto the said party of the second part, its successors and assigns forever, subject only to the proviso in the said indenture of mortgage mentioned. And we do hereby make, constitute, and appoint the said party of the second part, our true and lawful attorney, irrevocable, in our name or otherwise, but at its proper costs and charges, to have, use, and take, all lawful ways and means for the recovery of all the said money and interest, and in case of payment, to discharge the same as fully as we might or could do if these presents were not made.

In witness whereof, the said parties of the first part, in pursuance of a resolution of the Board of Directors of said Company, have caused their corporate seal to be hereunto affixed, and the same to be

signed by their president, and attested by their cashier, this twenty-sixth day of April, in the year one thousand eight hundred and forty-one.

The Morris Canal and Banking Company by
E. R. BIDDLE,
President.
Attest, ISAAC GIBSON,
Cashier.

Sealed and delivered in presence of
WALTER BETTS, Jr. [SEAL.]

Schedule C., referred to in the within Bill.

Know all men by these presents, that the State of Michigan, party hereto of the first part, in consideration of the sum of $20,000, lawful money of the United States, to the said State of Michigan in hand paid by Abraham G. Thompson, of the City and State of New York, of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part a certain indenture of mortgage, bearing date the sixth day of March, one thousand eight hundred and forty one, made by the Long Island Railroad Company as the party thereto of the first part, to the Morris Canal and Banking Company, upon the real estate of the said The Long Island Railroad Company, to secure the principal sum of $40,000, and recorded in the office of the clerk of Kings County, in lib. 68 of mor., p. 417, 28th April, 1841, in the office of the clerk of the County of Queens, in lib. M M of Mortgages, at page 205, on the 10th of May, 1841, and in the office of the clerk of the county of Suffolk, in lib. 27 of mort., at p. 143, on the 11th of June, 1841, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest; which bond and mortgage were assigned by the said The Morris Canal and Banking Company to the said State of Michigan, by an instrument of assignment bearing date the 26th day of April, in the year 1841, and recorded in each of the three clerk's offices hereinbefore stated, to have and to hold the same unto the said party of the second part, his executors, administrators, and assigns forever, subject only to the proviso in the said indenture of mortgage mentioned; and the said State of Michigan do hereby constitute and appoint the said party of the second part their true and lawful attorney irrevocable in their name or otherwise, but at his proper cost and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in case of payment, to discharge the same as fully as they might or could do if these presents were not made; and the said State of Michigan

do hereby covenant, promise and agree to and with the said party of the second part, that all the principal sum secured by the said bond and mortgage is still due and unpaid.

In witness whereof, the said State of Michigan has to these presents caused the great Seal of State to be affixed, and these presents to be signed by Charles G. Hammond, Auditor-General, John J. Adam, Treasurer, and Robert P. Eldridge, Secretary of the said State, the 30th day of May, in the year 1843.

(Signed) CHARLES G. HAMMOND,
Auditor-General.
JOHN J. ADAM,
State Treasurer.
R. P. ELDRIDGE,
Sec. of State of the State of Michigan.

Sealed and delivered in presence of
C. C. JACKSON,
T. F. BRODHEAD. [SEAL.]

State of Michigan, Wayne Co., ss.

On this 30th day of May, in the year of our Lord 1843, before me, the subscriber, a commissioner in and for the said State, appointed by the Governor of the State of New York, to take the acknowledgment and proof of deeds and other writings under seal to be used or recorded in the said State of New York, and to administer oaths and affirmations, appeared Charles G. Hammond, Auditor-General, John J. Adam, State Treasurer, and Robert P. Eldridge, Secretary of State of the said State of Michigan, all of whom are personally known to me to be such officers as hereinbefore described, who being by me sworn, did depose and say, that they reside in the said State of Michigan, at Detroit, the seat of government thereof, and that the seal affixed to the foregoing instrument is the great seal of the said State of Michigan, that the seal was affixed thereto by authority of the said State, that the deponents had severally subscribed their names to the foregoing instruments as such officers aforesaid, and that they severally acknowledged the said instrument to be the act and deed of the State of Michigan, all of which is to me satisfactory evidence of the due execution of said instrument by the State of Michigan.

Given under my hand and seal.

C. C. JACKSON, [L. S.]
A Commissioner for the State of Michigan, appointed by the Governor of New York, to take acknowledgments, and administer oaths and affirmations.

By the Legislature of the State of New Jersey.

An Act to Incorporate a Company to form an Artificial Navigation between the Passaic and Delaware Rivers.

Passed 31st December, 1824.

Whereas the construction of a canal to unite the river Delaware near Easton, with the tide waters of the Passaic, will be of great public benefit and advantage to the people of New Jersey; now, therefore, in order to secure to the State the results of this public work, and also as an inducement to a company to engage in this important undertaking, and in consideration of the risks and expenditures which they may encounter in its execution and operations; Therefore

I. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, that Jacob S. Thompson, of Sussex, Silas Cook, of Morris, John Dow, of Essex, Charles Board, of Bergen, and all and every other person or persons, who may become subscribers, according to the mode hereinafter prescribed, their successors and assigns, shall be, and are hereby incorporated by the name of the "Morris Canal and Banking Company," for the purposes and with the privileges and immunities hereinafter described, defined and granted; and by that name shall be a body corporate and politic in law, and shall and may sue and be sued, implead and be impleaded in courts of justice, or in any other place whatsoever; and the said Company shall have power and authority, at any time after the passage of this Act, to purchase, receive in donation, possess, enjoy and retain, demise, grant, alien and sell, all such lands, tenements, hereditaments, water streams and water privileges, rights, goods, chattels, and effects of every description whatsoever, as may be necessary for carrying into effect any of the provisions of this Act, and under the restrictions and limitations therein mentioned; and that the said Company shall have perpetual succession, and power to make and use a common seal, and the same to renew and change at pleasure; and also to adopt, establish, and carry into execution, such by-laws, ordinances and regulations, as shall by its president and directors, be judged necessary or convenient for the said corporation, in respect to its canal and banking operations hereinafter mentioned, and the same to change, alter, repeal, annul, and re-enact: provided the same be not contrary to the Constitution or laws of the United States or of the State of New Jersey.

II. And be it enacted, That George P. M'Culloch and John Scott, of the county of Morris, Israel Crane, of the county of Essex, and Joseph G. Swift, Henry Eckford, and David D. Ogden, of the city of New York, be, and they are hereby appointed commissioners for receiving subscriptions for the sum of one million of dollars, to con-

stitute the capital stock for the canal aforesaid, in shares of one hundred dollars each; and that the said commissioners, or a majority of them, shall and do open books for that purpose, at such time and in such place or places within this State as they shall designate, by public advertisements, to be previously inserted for at least three weeks in a public newspaper, printed in Morristown, Newark, and the city of New York, respectively; and shall continue the same open until the said capital stock shall be subscribed, or at their discretion, close the same, after they shall have remained open two days, and again open the same at some other time or times, place or places, giving public notice thereof as aforesaid. And the sum of ten per cent. upon each share so subscribed shall be paid in specie, or in the bills of banks which redeem their bills with specie, by each subscriber, at the time of subscription, to the said commissioners, or a majority of them; and the amount so received at the time of subscription, shall, by the said commissioners, or a majority of them, be deposited in such bank or banks as the said commissioners, or a majority of them, may elect in their joint names, there to remain until the same shall be by them paid over to the directors of the said Company, to be appointed as hereinafter directed; and the said directors, when so appointed, shall have power, and they are hereby authorized, to call upon the said subscribers for the payment of further instalments, in such sum or sums, at such time or times, and under such forfeiture or forfeitures, as they may deem expedient, until the whole amount of the said shares so subscribed shall have been fully paid.

III. And be it enacted, that the management of the concern of the said Company shall be, and the same is hereby vested in fifteen directors, to be selected from the stockholders; and that the said directors shall choose, by plurality of votes, a president from among themselves; and as soon as conveniently may be after the said stock of one million of dollars shall have been subscribed, the before-named commissioners, or a majority of them, shall convene the said stockholders, by public notice to be given as aforesaid, and at such time and place as they shall designate in said notice, to choose the first board of directors, who shall hold their offices until the first Monday of April, eighteen hundred and twenty-six. And if, for any cause whatsoever, an election for directors should not be made on the day whereon, in pursuance of this act, it ought to be made, the said corporation shall not for that cause be deemed dissolved, but it may be lawful at any other time to hold such election, public notice of the time and place being previously given as aforesaid; and until such election be made, the president and directors for the time being shall continue in office: Provided, such election be held before the first day of January next ensuing the said day of election. And in case of the death, resignation, incapacity, or removal of the president or of one or more of the directors, the vacancy thereby occasioned may be supplied by appointments to be made by the board of directors, and

at all elections of directors each stockholder shall be entitled to one vote for every share of stock by him or her held.

IV. And be it enacted, that no State, county, township, or other public assessments, taxes, or charges whatsoever, shall at any time be laid or imposed upon the said Canal Company, or upon the stocks and estates which may become vested in them under this act; but this exemption shall not extend to any other estate or property of the Company than such as is possessed, occupied, and used by the said Company for the actual and necessary purposes of said canal navigation under this act, according to the true intent and meaning thereof; and no tax shall be imposed upon any property of said Company, or of other persons, transported or used upon or about said canal, of greater amount, according to the value of the article taxed, than shall at the same time be imposed upon the property of the same or similar kinds in the State of New Jersey.

V. And be it enacted, that it shall be lawful for the said Company to construct, make, and execute a canal, or artificial navigation, to connect the waters of the Delaware River, near Easton, with the tide waters of the Passaic River, and passing through the county of Morris, with all the locks, works, devices, wharves, toll-houses, and offices necessary for the use of said canal. And it shall and may be lawful for the said Company, by its president and directors, and by any agent, engineer, superintendent, or contractor, or any other person or persons employed in the service of said Company, to enter from time to time, and at all times, and upon all lands, whether covered with water or not, for the purposes of exploring or surveying the route or routes for said canal, and locating the several works as above specified, doing thereunto no unnecessary damage. And when the said route or routes shall have been fixed upon, and its several works located by the president and directors, or a majority of them, and a survey thereof deposited in the office of the Secretary of State, then it may be lawful for them, and for any agent, superintendent, engineer, contractor, or any person or persons employed in the service of said corporation, at any time to enter upon, take possession of, and use all and singular such lands, water, and streams, subject to such compensation to be made therefor as is hereafter directed.

VI. And be it enacted, that where lands, waters, and streams, that may be useful for said canal, shall not be made a free gift by their owner or owners to the said Company, then the Company shall pay to the owner or owners such compensation as shall be mutually agreed upon. And in case of disagreement in relation to the value of such lands, waters, and streams, or in case the owner or owners thereof be *feme covert*, under age, *non compos mentis*, or reside out of the State, then it shall be lawful to, and for the aforesaid president and directors, from time to time, and at all times, to cause a survey or surveys, and a map or maps, to be made of any of the lands, waters, and streams, in their estimation requisite, and not given as

aforesaid, and which they are authorized by this act to take for the uses aforesaid; in the field book of which map and survey, or maps and surveys, shall be distinguished the land or waters of each of the several owners and occupants appropriated, or intended to be appropriated, as aforesaid, and the quantity thereof, and shall exhibit the same to one of the justices of the Supreme Court in this State, not being a stockholder (having given at least ten days' previous notice in writing to the parties concerned, if resident in the State, and by publication in at least two gazettes published in the counties to be traversed by the Canal, of the time and place of such exhibition), such book and map being accompanied by the oath or affirmation of one of the engineers employed by said Company; that the premises therein described are required to be occupied by the Company for the purpose of carrying into effect the object set forth by this act, and are not more than is requisite for the said uses; and thereupon it shall be the duty of said justice to certify such map and book under his hand and seal, and to cause the same to be filed in the office of the clerk of the county where such water or stream may be situated, there to remain a public record. And it shall also be the duty of said justice, at the time and place aforesaid, by a writing under his hand and seal, to appoint three discreet and disinterested freeholders, chosen from some county or counties not interested by the canal, as appraisers, who shall, before they enter upon the duties of their appointments, severally take and subscribe an oath or affirmation, before some person authorized to administer oaths, faithfully and impartially to perform the duties required of them by this act, and shall receive such compensation, to be paid by said Company, as the justice by whom they are appointed shall determine. And it shall be the duty of said appraisers, or a majority of them, if requested so to do by the owner or owners, or by the Company, to make a just and equitable estimate and appraisal of the value of the lands, and damages to the several owners, proprietors, or parties interested in the premises so required for the purposes aforesaid. The said appraisers, having given ten days' previous notice of the time and place of meeting, to make such appraisements, to the owner or owners resident in this State. And the appraisers, or a majority of them, shall make regular entries of their determination and appraisal in a book or books, to be by them kept for that purpose, and shall certify the same under their hands and seals, acknowledging the same before some person authorized to take the acknowledgment of deeds, and shall cause such book or books to be filed in the office of the clerk of the county in which the lands may be situated, there to remain a public record. And the Company shall pay or tender the damages so assessed to the person or persons entitled thereto; or in case such owner or owners shall be *feme covert*, under age, *non compos mentis*, or reside out of the State of New Jersey, the said Company shall pay the same into the Court of Chancery of this State, to be disposed of

under the order of the Chancellor, according to the laws of this State; and immediately thereupon, the estate, right, property, and interest, in and to the premises so appropriated, described, and appraised, shall be vested in the Company, to be by them held so long as they shall be used for the purpose of said canal.

VII. And be it enacted, That it shall be lawful for the president and directors of said Company, and their superintendents, engineers, workmen, and laborers, with carts, wagons, and other carriages, and with their beasts of draught and burden, and all necessary materials, tools, and implements, to enter upon all lands contiguous or near to the route or tract of the canal, doing as little damage thereto as possible, and repairing any breaches they may make in the enclosures thereof, and to take and carry away any stone, gravel, clay, sand, or earth, there being most conveniently situated, and being most suitable for making or repairing said canal, the locks, and other devices before mentioned, thereto belonging—the said owners or occupants being entitled to a fair compensation or remuneration for the materials taken, or damages done, if claimed within twelve months from the time of such damage sustained, or materials taken away. And in case of disagreement as to the amount of such damage, then it shall be lawful for the clerk of the Common Pleas of the county, upon the application of the Company, to appoint three judicious disinterested freeholders as appraisers, who, having given at least fifteen days' notice to the owners, occupants, or persons having charge of such lands, and having been previously sworn fairly and impartially to inquire into, and report the amount of the said damages, shall deliver to each party, or deposit in the clerk's office of the county for their use, a copy of their appraisal under their hands and seals, which appraisal shall be conclusive evidence of the amount of damages in any suit be brought therefor, deducting therefrom, on such suit, all cost and charges of the appraisement, if the amount so appraised shall not exceed one dollar, nor be less than what the Company offered to pay before the appointment of appraisers.

VIII. And be it enacted, That the president and directors, or a majority of them, shall have power to elect all engineers, treasurers, collectors, cashiers, tollmen, clerks, agents, artificers, workmen, laborers, servants, and officers whatsoever, necessary in their judgment for conducting the affairs of the Company, and to dismiss and elect others at their pleasure; and also shall have power to charge and collect tolls and rates for the passage of all boats, goods, draught cattle, wares, passengers, produce, and merchandise whatsoever, upon the canal, or upon its banks; and to make, enact, and at pleasure, change and re-enact, such tolls and rates, and also regulations and rules for the collection and levying of the same, as to them may seem proper: *Provided*, the Company shall, at no time, charge more than three cents per ton per mile, on the passage of coal, lime, gypsum, iron, iron ore, and stone, and a proportionable charge upon other

articles, contemplating their bulk, weight, and value; and a card thereof to be put up in a conspicuous place at every lock, or other point on said canal, where the toll shall be required to be paid. And if, at any time hereafter, the said president and directors shall deem it expedient to increase their capital stock for the canal aforesaid, it shall be lawful for them so to do, and to obtain subscriptions for the same, and to manage and to direct the same agreeably to the provisions, true intent, and meaning of this act; and all stockholders of such additional shares, and their assigns, shall be thenceforward incorporated into the same Company. *Provided always*, that a preference of subscription shall always be given to actual stockholders, in proportion to the shares they shall respectively hold, and that such additional stock shall not exceed five hundred thousand dollars.

IX. And be it enacted, That at the general meetings of the stockholders, to be held annually, agreeably to the second section of this act, a general statement of the affairs of the Company shall be made out, and exhibited by the president and directors; and the president and directors, or a majority of them, shall, at that meeting, or as often as to them may appear expedient, declare such dividends of the net profits of the Company as they may think proper.

X. And be it enacted, That the capital stock of said Company shall be deemed personal property; and that all shares of the capital stock at any time owned by any stockholder, shall be transferable on the books of the Company in such manner as the by-laws shall ordain; but all debts due or payable to the Company, and also all outstanding engagements with it, shall be satisfied previously out of said stock, before such transfer can be made, and before any dividend or dividends shall be paid upon such shares, unless by the consent of the president and directors.

XI. And be it enacted, That under the powers and conditions stipulated in the foregoing enactments, it shall be lawful for the Company to alter, at any time, any part or parts of the route of the canal, making compensation for damages to owners as hereinbefore directed; and that it shall not be lawful for any person or persons, or any body politic or corporate whatsoever, to construct any canal within ten miles of any point of the main trunk of the Morris Canal, without the consent of the said Company, expressed in writing, under their common seal: but this prohibition shall not extend to the construction of any canal of less than ten miles in length, and which does not approach within two miles of the canal to be constructed under this charter, and saving to any person or persons, or body corporate, any of their just and legal rights already vested, to the contrary of such prohibition. And it shall be the duty of the Chancellor of this State, upon application made therefor by the solicitor of the Company, in due form, to issue his injunction to stay and prevent the construction of any such canal; and also, it shall be lawful for the said Company to raise the waters in the Green Pond, and lake Hopat-

cong, commonly called the Great Pond, by damming the same, and to use the surplus water thus saved, and so much water of said ponds as shall be necessary for said canal, to take and convey said waters into said canal, all losses and damages to the owners of said pond, and the lands flowed or otherwise used in obtaining water for the same as aforesaid, being paid for agreeably to the previous provisions of this act.

XII. And be it enacted, That when the said canal cross any public road or farm, it shall be the duty of the Company, at their proper expense, to make good and sufficient bridges across said canal, and to keep the same in repair, so as to prevent any inconvenience in the usage of the said road or farm, by reason of the said canal crossing the same.

XIII. And be it enacted, That if any person or persons, shall in any manner, wilfully or maliciously destroy, injure, or obstruct said canal, or any of its parts, or works therewith connected, or unnecessarily and maliciously open any gates thereon, or otherwise let off and waste water to the detriment of said Company, he, she, or they, shall be considered guilty of a misdemeanor, and being thereof convicted, shall be p nished by fine or imprisonment, or both, at the discretion of the court in which such conviction shall take place: Provided such fine shall not exceed the sum of twenty-five dollars, nor the imprisonment the term of two years; and such criminal prosecution shall in no wise impair the right of action for damages by a civil suit to be brought by the Company.

XIV. And be it enacted, That for the encouragement of so great an undertaking as the erection of said canal, and in some measure to induce capitalists and others to subscribe to the same, it shall be lawful for the said Company to increase the capital stock of said Company, for the purpose of banking operations, but under the following conditions, limitations, and restrictions, namely: that as soon as the said Company shall have actually paid, laid out, and expended the sum of two hundred thousand dollars, in the purchase of lands, waters, and water privileges, necessary for the construction and uses of said canal, and in constructing, making, and building the same, it shall and may be lawful for the president and directors aforesaid to call from the stockholders respectfully of said Canal Company, for the time being, in proportion to their respective shares, the sum of two hundred thousand dollars, or any less sum, in the discretion of said president and directors, towards a capital, for banking purposes as aforesaid; and so often thereafter as the said Company shall have paid, laid out, and expended, other like sums of two hundred thousand dollars in the purchase of lands, as aforesaid, and in constructing, making, and building the said canal as aforesaid, it shall be lawful for the president and directors aforesaid, to increase the capital stock of said Company, for banking purposes, to such further amount of two hundred thousand dollars: Provided, that the said increased capital of

the Company, for banking purposes, shall not exceed in the whole, one million of dollars; and the president and directors shall and may, upon any increase of the capital of said Company, for banking purposes as aforesaid, call for the same from the stockholders respectively, at such time, and in such instalments in proportion to their respective shares, and upon such notice, and under such forfeitures, as they shall prescribe: Provided always, that no such increase of stock for banking purposes as aforesaid, shall at any time be made, by reason of an alleged expenditure of any of the respective sums of two hundred thousand dollars, as aforesaid, until the president and directors aforesaid shall have first caused to be exhibited to the Governor, or person administering the government of this State, a just and full statement and account, showing that such expenditure of two hundred thousand dollars hath actually been made in and about the purchases necessary for the construction of, and in the various works as aforesaid of said canal; and the president and cashier, or person keeping the accounts of said Company, shall severally certify the said account of expenditures to be just and true, and subscribe their names thereto, and, moreover, make, subscribe, and annex to the same their respective oath or affirmation, taken before one of the Justices of the Supreme Court of this State, that the said account is just and true to the best of their knowledge and belief; and shall otherwise, if required by the said Governor, or person administering the government, prove to the satisfaction that the same is true, and further obtain from said Governor, or person administering the government, a certificate under his hand and the seal of the State, certifying that it hath appeared to him that the said sum of two hundred thousand dollars has been actually expended upon and towards the said canal, according to the provisions of this act, and that the said Company is entitled to increase its capital stock for banking purposes to that amount; which certificate the said Governor, or person administering the government, upon his being satisfied of the truth and fairness of said account, is hereby authorized and required to grant. And the said president and directors, before any increase of the said capital for banking purposes, to such additional amount of two hundred thousand dollars as aforesaid, shall cause the account and statement exhibited and sworn to as aforesaid, to be filed in the office of the Secretary of State, and the certificate of the Governor, or person administering the government as aforesaid, to be recorded in the same office; a certified copy of which certificate and account, by the Secretary of State, under the great seal of the State, shall be received in all courts in this State, as evidence that such expenditures of two hundred thousand dollars was made on or towards said canal, at the exhibition of the account aforesaid.

XV. And be it enacted, That if the person acting as president and cashier, or accountant, or either of them, shall wilfully make a false oath to any such account as is mentioned in the foregoing section,

such person shall be deemed guilty of perjury, and on conviction of the same, be subject to the pains and penalties of wilful and corrupt perjury.

XVI. And be it enacted, That within one year after the first increase of the capital stock of the said Company for banking purposes as aforesaid, shall have been made, and so annually thereafter, until the said canal shall have been completed, the said Company shall cause to be made out a just and true account of their expenditures upon said canal, within each of the said years respectively, which account shall be certified and sworn to by the acting president and cashier, or accountant, in manner as directed in the fourteenth section of this act; and the said account shall be filed within such year in the secretary's office of this State. And whensoever it shall appear, by such annual account in any year, that the said Company have not actually expended on said canal at least the sum of one hundred thousand dollars within such year, or if the said Company shall neglect to file said account in manner aforesaid in any year, then and in either case, the said Company shall wholly cease from and discontinue all banking discounts and operations upon their said increased capital for banking purposes, and shall not resume the same until the said account shall have been proved and filed as aforesaid, and showing such annual expenditure.

XVII. And be it enacted, That if the said acting president and cashier, or accountant, or either of them, shall wilfully make a false oath to any such account as is mentioned in the foregoing section, such person shall be deemed guilty of perjury, and on conviction of the same, be subject to the pains and penalties of wilful and corrupt perjury.

XVIII. And be it enacted, That the banking-house of the said Company shall be situated, and their banking operations be conducted, in the city of Jersey, in the county of Bergen; and it shall be the duty of the president and cashier of the said corporation, for the time being, once in two years to make a full return to the Secretary of State, under oath, of the stock of said Company, used in banking operations, where the same is employed, how much specie is in the vault or vaults of their banking-house or banking-houses, what amount of notes of said Company are in circulation, and the amount of debts due from and owing to said Company; and in case the said president and cashier shall neglect or refuse so to do for the space of ninety days, the Legislature may, at any time thereafter, in their discretion, suspend banking operations.

XIX. And be it enacted, That the funds of the said Company shall never be employed in any other operations, nor for any other purposes, than those provided for in this act.

XX. And be it enacted, That nothing in this act shall be taken to impair the right of any person to an action against the said Company, for damages to his or her water rights, lands, tenements, or

hereditaments, by the erection of said canal, where such person had not been agreed with by the said Company, or his or her damages, right and estate satisfied, and vested in the said Company, under the previous provisions of this act.

XXI. And be it enacted, That in eleven years after the passing of this act, and annually thereafter, the president and directors of said Company shall be, and they are hereby, required to pay or cause to be paid into the treasury of this State the one-half of one per cent. on the whole amount of such capital actually subscribed and in, and which shall thereafter be paid into such Company for banking purposes as aforesaid; and upon neglect or refusal so to do by said president and directors, the said tax shall and may be recovered in such manner as is directed in an act entitled "An Act to Tax Bank Stock," passed November second, one thousand eight hundred and ten, or any other act or acts of the Legislature for the time being, for the recovery of tax on bank stock; and the said tax, when collected, shall be appropriated as other bank tax is or shall by law be directed to be appropriated.

XXII. And be it enacted, That so much of this act as relates to banking rights and privileges upon the increased capital of the Company for banking purposes as aforesaid, shall continue and be in force for and during the term of thirty-one years from the passage of this act.

XXIII. And be it enacted, That unless one million of dollars shall be subscribed as aforesaid, on or before the first day of November next, and also, unless the said canal shall be completed and opened for the passage of boats within fifteen years from the passage of this act, then the same shall be, and is hereby declared to be, null and void.

XXIV. And be it enacted, That the said Company shall and may be, and are hereby made, capable of using any part of their capital which shall be paid in for banking purposes as aforesaid, for the following additional purposes, that is to say: in buying and selling bills of exchange, or the stock of any body or bodies corporate and politic, and in loans upon bonds and mortgages; and they may bind themselves by contract not under seal, and receive and take by deed or devise any effects and property, both real and personal, which may be left or conveyed to said Company, in trust, and to assume, perform, and execute any trust which has been or may be created by any deed, bequest, or devise, as aforesaid. And the said Company is hereby authorized and empowered to receive, take, possess, and stand seized of, and to execute any and all such trust or trusts in their corporate capacity and name, in the same manner and to the same extent as any private trustee or trustees might or could lawfully do, and no further; but it is hereby expressly declared, that the privileges hereby granted to the said Company for receiving and executing trusts are solely for the purpose of the protection of pro-

perty so conveyed to them, and not for the purpose of aiding or promoting any traffic in any kind of stocks, or in any kind of goods, wares, and merchandise; and in case any kind of goods, wares, or merchandise shall be so conveyed or bequeathed in trust as aforesaid, the said Company shall dispose of the same as soon as it conveniently can be done, and the avails thereof shall be invested in stocks, or in bonds and mortgages, or other permanent securities, for the sole use of the person or persons beneficially interested therein; and the said privileges shall not be so construed as legally to empower the said Company to take any other kind of trusts than such as are usual with other trustees: Provided always, That this act shall not extend to create any entailment, trust, or perpetuity, contrary to any existing provision or law.

XXV. And be it enacted, That the said canal, when completed, shall forever thereafter be esteemed a public highway, free for the transportation of any goods, commodities, or produce whatsoever, on payment of the tolls, and conforming to the regulations made or authorized by this act. And it shall be lawful for the Legislature of this State, at any time hereafter, to appoint three commissioners for the purpose of fixing and regulating the tolls to be taken on said canal, which shall be done by the said commissioners, in conjunction with two commissioners to be appointed by the Company, unless the said Company should refuse or neglect, upon due notice, to appoint any commissioners on their part; in which case the said commissioners on the part of the State, or a majority of them, shall fix and regulate the tolls, with due regard to the interest of the Company and of the citizens of this State: Provided always, That they shall not have power to reduce said tolls lower than one-half of the greatest amount allowed by the ninth section of this act, without the consent of the president and directors of said Company.

XXVI. And be it enacted, That at the end of ninety-nine years from the passing of this act, it shall and may be lawful for this State to take to itself, and on its own account, the said canal and its appurtenances, paying to the said Company the fair value thereof, to be estimated and fixed upon by ten commissioners, or a majority of them, to be mutually chosen by this State and the said Company; or, in case that it shall not be done at that time, or within one year thereafter, this charter shall continue, so far as it respects its canal operations and privileges, for the further term of fifty years, when it shall cease, and the said canal, with its appurtenances, become the sole property of this State.

XXVII. And be it enacted, That the first, fifth, sixth, and eleventh sections, and every other part of this act, shall be so construed as that the said corporation shall not be authorized to take or appropriate to the use of said canal, or under color or pretence that the same are necessary therefor, any lands, waters, or streams of water, but such only as are actually necessary for the erection and

use of said canal, for the purposes of navigation only, and its necessary towing paths and works, as specified in the fifth section of this act; and that the said corporation shall not be authorized to demise, grant, alien, or sell, any such lands, waters, or streams, taken or pretended to be taken or required for the use of said canal as aforesaid, or any part thereof, to any person or persons whomsoever (excepting only such lands as may be received by them by donation, or acquired of them by private contract), and that the said corporation, or any other person, shall not be authorized to use or appropriate any part of said waters for mills, or any other purpose than the mere navigation of said canal; and all waters not used for that purpose shall be permitted, without unnecessary interruption, to flow into their ancient and natural courses and channels; and that the twentieth section of this act shall be so construed as to extend to damages sustained not only by the erection of the said canal in the first instance, but also by the subsequent operations of the Company, from time to time, as the same may arise; anything in this act before contained to the contrary notwithstanding.

XXVIII. And be it enacted, That this shall be a public act, and shall be judicially referred to by all judges, justices, and others, without being specially pleaded.

A Supplement to the Act entitled "An Act to incorporate a Company to form an Artificial Navigation between the Passaic and Delaware Rivers."

Passed 31st December, 1824.

SEC. 1. Be it enacted, by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That any time after one million of dollars shall be subscribed towards the capital stock of said Company, and ten per cent. thereon paid to the commissioners and directors appointed as mentioned in said act, it shall be lawful for the said Company to call in from the stockholders respectively the sum of one hundred thousand dollars, to be used for banking purposes, as directed in said act; but they shall not call in any more money for said purposes, except in conformity to the provisions of said act. And if the said Company shall omit, for the space of one year after the passing of this supplement, to expend the sum of one hundred thousand dollars on said canal, and file an account thereof, agreeably to the sixteenth section of said act, the banking privileges hereby given shall cease.

An Act to authorize the Morris Canal and Banking Company to extend the Morris Canal to the Waters of the Hudson.

Passed January 26th, 1828.

SEC. 1. Be it enacted by the Council and General Assembly of

this State, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the Morris Canal and Banking Company, incorporated by an act, entitled "An Act to incorporate a Company to form an artificial navigation between the Passaic and Delaware Rivers," passed December 31, 1824, to continue the Morris Canal to the waters of the Hudson, at or near the city of New Jersey; and, for that purpose, said Company shall have all the rights, powers, and privileges given and granted by the said act, and shall be subject to all the restrictions, limitations, conditions, and provisions in the said act contained, in the same manner, and to same effect, as if the said Company had been originally authorized by said act to construct a canal or artificial navigation to connect the waters of the Delaware River, near Easton, with the waters of the Hudson, at or near the city of Jersey: Provided, that the canal shall be connected with the Passaic River at the village of Newark, so that the boats used on said canal can, at all proper times, pass from the same into the river, and from the said river into the canal: Provided also, that nothing herein, or in the act of incorporation hereinbefore mentioned, contained, shall be taken or construed to hinder or prevent the Legislature from authorizing a deep cut or canal for sloop navigation between Newark and New York bays: And provided further, that the said Company, unless it be with the consent of the owner or owners, shall not take any lands for extending the said Morris Canal, pursuant to the provisions of this act, until the said lands shall have been surveyed and appraised, pursuant to the sixth section of the said act of incorporation, and until the said Company shall have first paid, or tendered to the person entitled thereto, the amount of such appraisement; or in case such person shall be *feme covert*, under age, *non compos mentis*, or out of the State, the said Company shall pay the same into the Court of Chancery of this State, and in all other respects the provision of the said act of incorporation shall be taken as applicable to lands to be taken for the purpose of extending the said canal, pursuant to the provision of this act, in the same manner as they apply to lands which may be taken pursuant to the said original act of incorporation.

Sec. 2. And be it enacted, That it shall and may be lawful for the said Company to make and construct the said canal through, upon, or along any street, road, or public highway; but if the said canal shall be made or constructed through, upon, or along any street or streets in the town of Newark and Jersey City, or either of them, in such case the land occupied by said canal, and for its towing-path, shall not exceed a space of thirty-two feet.

Sec. 3. And be it enacted, That it shall be the duty of the said Company, at their proper expense, to make good and sufficient bridges, and to keep the same in repair, across any part of the said canal which may be extended, pursuant to this act, so that it shall be convenient to the inhabitants at all times to pass to and from

their lands and meadows, and to the waters and landing-places of the said bays and rivers.

An Act to authorize the Morris Canal and Banking Company to borrow Money, and for other Purposes.

Passed February 23, 1829.

SEC. 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the said The Morris Canal and Banking Company to borrow the sum of five hundred thousand dollars, and to issue therefor their post notes, bearing an interest of six per cent. per annum, payable to the owners or *bona fide* holders thereof: Provided, that no such post note shall be issued of a less denomination than three hundred dollars.

SEC. 2. And be it enacted, That for the purpose of securing the punctual payment of the interest, and the redemption and payment of the principal sums so to be borrowed as aforesaid, the Morris Canal and Banking Company be, and they are hereby authorized to execute and deliver to any person or persons, body corporate or politic, an assignment, conveyance, or transfer of the said Morris Canal, with its appendages and appurtenances, and of all the lands, tenements, and premises belonging to the said Company, and of the charter, chartered rights, and privileges of the same, and conditioned for the purpose aforesaid; which assignment, conveyance, or transfer shall be entered on record in the office of the secretary of this State, and shall be valid and effectual as a collateral security for the payment of the principal and interest of the said post notes, according to the tenor and effect thereof.

SEC. 3. And be it enacted, That if the said Company shall neglect or refuse to pay to any person or persons, being the owners or *bona fide* holders or assignees of any post note or post notes, so to be issued by the said Company for the said loan of five hundred thousand dollars, the interest due thereon, as the same may become due, or the principal amount of such post note or post notes, when the principal thereof shall become due, at the banking-house and other office of the said Company in this State, the same having been presented for payment, then, and in either of the cases aforesaid, upon such failure and defalcation being proved, or otherwise made to appear to the satisfaction of the Chancellor of this State, the said Morris Canal, with all its appendages and appurtenances, and all its chartered rights and privileges, shall become the property of the said assignees or transferees, for the use and benefit of the *bona fide* owners of the post notes that may have been issued by the said Company under the provisions of this act; and thereafter the said assignees or transferees shall hold, use, and enjoy the said canal, with its appendages and

appurtenances, and take and receive the tolls, rents, issues, and profits thereof, in trust for the owners as aforesaid, and of the said post notes in proportion to their respective interest therein, during the whole of the residue of the term for which the said Company was chartered, in as full and ample a manner as the stockholders of the said Company could or might have used and enjoyed the same, subject, nevertheless, to all the restrictions, limitations, and conditions contained in the said charter.

SEC. 4. And be it enacted, That if the said Morris Canal and Banking Company shall pay to the owners or *bona fide* holders of the post notes so to be issued by them for the said loan, the interest to become due thereon in manner aforesaid, and the principal sums due thereon, when the same shall become payable, according to the tenor and effect of such post notes, then and from thenceforth the said Morris Canal and Banking Company shall stand seized and possessed of said canal, with all its appendages and appurtenances, and of and with all the rights, immunities, and privileges contained in and guaranteed to them by their original charter, in as full and ample a manner as if this act had not been passed, and the grant, conveyance, or assignment of the said canal, with the lands, appendages and appurtenances hereinbefore provided for, shall cease and be utterly null and void, and as if the same had never been made.

An Act to amend an Act entitled "An Act to incorporate a Company to form an artificial navigation between the Passaic and Delaware Rivers," passed 31st of December, one thousand eight hundred and twenty-four, and for other purposes.

Passed January 28, 1830.

Whereas the Morris Canal and Banking Company have petitioned for certain amendments, modifications and alterations of the Acts, incorporating and affecting said Company.

SEC. 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That where any freeholder who may have been, or hereafter may be appointed, as an appraiser, pursuant to the sixth section of the Act, entitled "An Act to incorporate a Company to form an artificial navigation between the Passaic and Delaware Rivers," shall die, remove from the State, refuse to act, or his place or office otherwise become vacant, it shall be lawful for any justice of the Supreme Court in this State, not being a stockholder, to appoint in the manner prescribed by said last-mentioned Act, some other discreet or disinterested freeholder as appraiser, to fill such vacancy, and so as often as such vacancy shall happen as aforesaid; and the Justice of the Supreme Court, to whom application shall be made in this behalf, shall decide, upon such testimony as may be presented to him, before

he makes any new appointment as aforesaid, that such vacancy has happened within the true intent and meaning of this act; and when such appointment shall proceed according to the provisions of the last-mentioned act, and shall in all things conform thereto, in the same manner as if the freeholders, then being appraisers, had been the persons originally appointed as appraisers, pursuant to the said act incorporating the said Company.

SEC. 2. And be it enacted, That the Morris Canal and Banking Company may, from time to time, borrow all such sum and sums of money as to the Board of Directors of the said Company shall appear necessary and proper, and for securing the due payment of the sums so borrowed, with the interest thereof, it shall and may be lawful for the said Company to pledge or hypothecate, by way of mortgage, trust or otherwise, howsoever, the Morris Canal, with all its privileges, appendages and appurtenances, and all the property and chartered rights of the said Company; and such pledge, hypothecation, mortgage or trust, may be valid for the due payment of any sum or sums of money, with the interest thereof, which the same may be given to secure; and in case default shall be made in the payment of any sum or sums of money, so borrowed as aforesaid, or the interest thereof, the person or persons, body politic or corporate, or their legal representatives or assigns, claiming under such pledge, hypothecation, mortgage, or trust, may, by due process of law, acquire and have, and hold, use and enjoy the said canal, with its appendages and appurtenances, and the property of the said Company, and take and receive the tolls, rents, issues and profits thereof, during the whole residue of the term for which the said Company is chartered or incorporated, in as full and ample a manner as the stockholders of the said Company could or might have had, used and enjoyed the same, subject, nevertheless, to all the restrictions, limitations, and conditions contained in the said first-mentioned act or charter of the said Company: Provided, that any deed by which any pledge, hypothecation, mortgage or trust, shall be created by virtue of this act, shall be entered of record in the office of the Secretary of State of this State: Provided, also, that nothing herein contained shall be taken or construed to affect or impair any prior liens that there may be on the said canal, or on the rights or property of the said Company; and that all person or persons, bodies politic or corporate, claiming, by virtue of any pledge, hypothecation, mortgage or trust, made pursuant to this act, shall have no right or title otherwise than according to the priority of their respective incumbrances, or of the pledge, hypothecation, mortgage or trust, which may have been given or created for his or their benefit.

An Act for the better protection of the Morris Canal, its works and appendages.

Passed, March 10, 1832.

Sec. 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That if any person or persons shall, in any manner, wilfully or maliciously destroy, injure or obstruct the Morris Canal, or any of its parts, or any of the works therewith connected, or thereunto appertaining, or shall wilfully or maliciously injure or obstruct the passage of any boat therein, or navigating the same, or, if any person or persons shall, against the will or consent of the person who may be by the said Company appointed to have charge of, or to attend any lock or inclined plane on the said canal, open any gate of such lock or plane, or shall work or attempt to work such plane, or to pass a boat, raft, or other floating thing through or over such lock or plane, or if any person shall wilfully or maliciously let off or discharge water from the said canal, through or by any waste-wier, or waste-gate, or otherwise, or shall shut down or close, either in part or in whole, any feed-gate or water-wier, or water-gate, which may have been opened to feed the said canal, or any part thereof, or to discharge water for the safety thereof, the person or persons so offending shall forfeit and pay to the said Company the sum of twenty-five dollars, to be recovered by and in the name of the president and directors of the Morris Canal and Banking Company, in any court having competent jurisdiction: Provided, that nothing herein contained shall be taken or construed to prevent the said Company from proceeding, if they shall elect so to do, under and pursuant to the provisions of the thirteenth section of the act, entitled "An Act to incorporate a company to form an an artificial navigation between the Passaic and Delaware Rivers," against the person or persons so offending, as in the said act is specified, and saving to the said Company the right, also, to prosecute a civil suit as it is given to them by the said act; but there shall, nevertheless, be no more than one penalty imposed upon any person or persons, in virtue of this act and the last-mentioned act, for the same offence.

An Act further supplementary to an Act, entitled, "An Act to Incorporate a Company to form an Artificial Navigation between the Passaic and Delaware Rivers," passed 31st December, eighteen hundred and twenty-four.

Passed 19th January, 1835.

Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the capital stock of the Morris Canal and Banking Company be in-

creased, for the purpose of completing the said canal, and paying the debts and claims already incurred by reason of the construction thereof, ten thousand shares; and the president and directors of said Company are hereby authorized and empowered to obtain subscriptions for said shares, in the manner directed by the act to which this is a supplement, and to issue certificates for the same, giving preference to original stockholders still holding their stock; and all stockholders of such additional shares, and their assigns, shall thenceforward be incorporated into the said Company; and that from and after the passing of this act, the par value of each and every of the shares in said Company, as well those heretofore authorized as those created by this act, shall be one hundred dollars; and that all holders of existing shares, representing two hundred thousand dollars each, may surrender the same, and shall thereupon be entitled to receive new certificates to double the number of shares by them surrendered: Provided, that no part of the moneys arising from the subscription hereby authorized, be applied to the exercise of any banking or trust powers whatsoever, but solely and exclusively to the completion of said canal, and the payment of its debts as above stated.

An Act further to amend an Act entitled, "An Act to Incorporate a Company to form an Artificial Navigation between the Passaic and Delaware Rivers," passed December thirty-one, eighteen hundred and twenty-four.

Passed 5th March, 1836.

SEC. 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That upon such navigable feeder or feeders, as in virtue of this act, or the act of original incorporation, may be constructed by the Morris Canal and Banking Company, for the purpose of conducting into the Morris Canal the waters of Long Pond, or other waters that may be requisite for the supply of the said canal, the said Company shall be and are hereby authorized to charge and receive the same rates of toll as are now lawfully chargeable upon the said canal.

SEC. 2. And be it enacted, That the twenty-seventh section of the act to which this is a supplement, shall not be so construed as to prohibit or prevent the said Morris Canal and Banking Company from letting to use the water necessary for the purposes of the canal, in working other machinery than that for the planes between Boonton, in the county of Morris, and the Passaic, at Newark; but no other person or persons shall so appropriate the water of said canal, without the consent of said Company: Provided, that nothing in this act contained shall be construed to authorize the said Company to interfere with the rights or privileges of other persons, in the use of the waters of this State, for the said purposes, without their consent; and Provided, also, that the said Company, shall not carry on or en-

gage in any manufacturing business; and Provided, further, that nothing in this act contained, shall be construed to authorize the said Company to use as much of the waters of the Musconetcong Creek, for the said purposes, as to deprive the owners of mills or manufactories on said creek, below the dam at Saxon's Falls, of sufficient water to turn one wheel, as at present, used to drive two run of millstones, with the necessary fixtures of the same, during eight weeks in the year, and at least two wheels, each of the same power, during the residue of the year, without the consent of the owners.

SEC. 3. And be it enacted, That in order to enable the Company to procure the requisite lands and premises, and to construct the several basins, reservoirs, and feeders, authorized by the said act of incorporation, and the amendments thereto, the said Morris Canal and Banking Company shall be, and they are hereby authorized to increase the capital stock thereof, to an amount not exceeding six hundred thousand dollars, in shares of one hundred dollars each, for which they may obtain subscriptions and issue certificates, in the manner prescribed in the said act of incorporation, and all holders of such additional shares shall thenceforward be incorporated into the said Company: Provided, that no part of the said sum of six hundred thousand dollars shall be used for banking purposes, but shall be applied exclusively to the objects set forth in this section.

SEC. 4. And be it enacted, That the corporate powers of the said Morris Canal and Banking Company shall be exercised by a Board of Directors, to consist of twenty-three persons, who shall elect a president annually from their body, and possess the other privileges and powers already conferred by law.

SEC. 5. And be it enacted, That within one month after the passing of this act, the Board of Directors shall be divided into five classes,—one consisting of three, and the remaining four of five persons each,—and so arranged that the term of service of one of said classes shall expire at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years; that three directors shall be elected at the end of the first year, and five directors at the end of the second, third, fourth, and fifth years, by the stockholders, in the manner now prescribed by law, and in like manner until the expiration of the charter; but the Supreme Court of this State shall have power to remove a director for misconduct, to be heard on such notice as they shall deem reasonable, on the application of a stockholder, or any person interested.

SEC. 6. And be it enacted, That the following persons shall constitute the first Board of Directors, that is to say, Louis McLane, John S. Crary, James Parker, George Griswold, John Haggerty, Garret D. Wall, Samuel R. Brooks, Washington Irving, John S. Darcy, Henry Yates, Peter M. Ryerson, Christian B. Zabriskie, Edwin Lord, Joseph L. Joseph, Isaac H. Williamson, Daniel Jackson, Jonathan Goodhue,

John Travers, Henry W. Hicks, James B. Murray, John Moss, Stephen Whitney, and Philemon Dickerson; that their authority and power as directors under this act shall commence from the time it shall take effect as a law, and that so much of the aforesaid charter, and no more, as is inconsistent with the foregoing provisions, be, and the same is hereby repealed: Provided, however, that the change in the mode of appointing directors, as pointed out in the present act, shall not be obligatory on the stockholders, unless within one month after the passing of this act, at least three-fourths of the stockholders, in number and amount, shall cause to be filed in the office of the Secretary of State, a writing, signed by the said stockholders, setting forth the number of shares by them held and duly attested by the president and cashier of said Morris Canal and Banking Company, signifying their assent to such change, and also their assent to the persons named in this section as directors.

SEC. 7. And be it enacted, That nothing in this act contained, shall be construed to authorize the said Company to issue their bank notes to such an extent as to create a circulation of said notes of more than two millions of dollars at any one time; and that the said Company, after the fourth day of July next, shall issue no bills of a less denomination than five dollars, unless the Legislature should hereafter repeal the act entitled, "An Act to prevent the issuing and circulation of small notes for the payment of money," passed the fourth day of March, eighteen hundred and thirty-five.

SEC. 8. And be it enacted, That the Legislature of this State shall have it in their power, at any time hereafter (whenever, in their opinion, it may become necessary), to appoint three commissioners, with full power to examine into the proceedings of the said corporation, and report the same to the Legislature.

The suit was subsequently, in due form of law, sent to the Superior Court of the City of New York, pursuant to the statute in such case made and provided, and the defendant, Abraham G. Thompson, having departed this life on or about the 29th day of October, A. D. 1851, and the said defendant, Henry Shelden, having been appointed by his will executor thereof, and having duly qualified as such executor, and the action having been revived against him, did, on or about the thirtieth day of December, in the year 1854, answer said bill of complaint in the words and figures following, that is to say:

The Superior Court of the City of New York, late in Supreme Court in Equity.

The several Answers of Henry Shelden, executor of the last will and testament of Abraham G. Thompson, deceased, one of the defendants, to the bill of complaint of Jesse Hoyt, complainant:

This defendant now and at all times saving and reserving to himself

all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, imperfections, and insufficiencies of the complainant's said bill of complaint, and therein contained for answer thereunto, or unto so much and such parts thereof as he is advised it is material and important for him that he should make answer unto, answering says, that he admits that on the thirty-first day of December, in the year 1824, the Legislature of the State of New Jersey passed the act to incorporate the Company known as "The Morris Canal and Banking Company," as in the said complainant's bill of complaint is stated and set forth; and that the said The Morris Canal and Banking Company was endowed with the privileges and immunities alleged in the said bill, and described in and by the said act of incorporation and the several acts of the said Legislature of the State of New Jersey, copies of which are annexed to the said bill. And as to the statements in the said bill relative to the time the said The Morris Canal and Banking Company commenced the construction of their canal from the Passaic River to the Delaware, the time the same was finished and put in operation, the time the Company commenced the business of banking, the capital upon which they commenced, and the time when and the amount to which the capital was increased, this defendant says he has not any knowledge or information unless from the said bill in respect thereof, and neither admits nor denies the same, but he is advised that the same are immaterial, and leaves the complainant to such proof thereof as may be proper.

This defendant further answering, says that, whether at the period mentioned in the said bill, or at any time, the said Company completed their said canal from the city of Newark to the Hudson's River, or whether the whole costs of the said canal was the sum mentioned in the said bill, or whether the gross receipts were the several sums therein stated, whether in the year 1841 the canal yielded little or no revenue, but was undergoing repairs, whether at the time mentioned in the said bill, or at any other time, the said Company leased the said canal as alleged in the said bill for the purpose therein mentioned, or for any other purpose, whether the officers and directors of the said Morris Canal and Banking Company engaged in the business of banking, as stated in the said bill, and whether there was due to the said Company on the first day of February, in the year 1837, nearly the sum of five millions of dollars, and whether the same, or a large amount thereof, was wholly lost to the Company, this defendant has not any knowledge or information excepting such as is given in and by the said bill of complaint, and neither admits nor denies the same; but he is advised that the allegations of the said bill in that behalf are wholly immaterial, and he leaves the said complainant to such proof in respect thereof as may be proper. This defendant, however, denies that by the losses aforesaid the said Company was rendered insolvent in fact, or within the meaning of the Act of the

State of New Jersey, passed on the sixteenth day of February, in the year 1829, entitled "An Act to prevent frauds by incorporated companies."

This defendant further answering, admits, that on the 24th day of April, in the year 1834, the Legislature of the State of New York passed the "Act to incorporate the Long Island Railroad Company," and he admits the organization of the Long Island Railroad Company, and the several acts in relation thereto, mentioned in the said bill of complaint. He further admits that from a period prior to the first day of November, in the year 1839, to some time in the year 1847, George B. Fisk was President of the said The Long Island Railroad Company, but he denies that the said George B. Fisk was the manager of the said Company, active, or otherwise, except the due and proper discharge of his duties as such president.

This defendant further answering, admits, that in the course of the lawful dealings between the said The Morris Canal and Banking Company, and the said The Long Island Railroad Company, the said Railroad Company became indebted to the said Canal and Banking Company, in the sum of about sixty thousand dollars, and that to secure the payment thereof, the said Railroad Company, by manner and form as alleged in the said bill of complaint, on the third day of November, in the year 1839, executed and delivered to the said The Morris Canal and Banking Company a mortgage, signed by the said George B. Fisk, as President, of and upon the goods and chattels, locomotive engines, with tenders, passengers, burden or freight and baggage cars, turning tables, cranes, tools, railroad iron, refuse and old iron, sawing machines, horse harness, and wood, mentioned and described in the said bill, and that a copy of the said mortgage was filed in the office of the clerk of the county of Kings, on the twenty-third day of the said month of November, in the year 1839, as alleged in the said bill.

This defendant further answering, says, that he has not any knowledge or information, except as derived from the said bill of complaint, in respect to the allegations of the said bill relative to the nomination and election of the said George B. Fisk, as one of the directors of the Morris Canal and Banking Company, his acceptance of such appointment, his acting in the capacity of such director, his meeting with a portion of the directors of the said Canal and Banking Company, his taking upon himself the responsibility of such director, his investigating and becoming acquainted with the affairs and condition of the said Company, and his continuance as such director, and this defendant neither admits nor denies the said allegations, but he insists that the said allegations, if true, are not material to the purposes of this suit, and he leaves the said complainant to such proof thereof as may be proper.

This defendant further answering, admits, that the said The Morris Canal and Banking Company became largely indebted to the State

of Michigan, but whether the said Company became so indebted prior to the third day of November, in the year 1839, as alleged in the said bill of complaint, or whether such indebtedness arose by reason of the connection of the said Company with the five million loan of the said State, as alleged in the said bill, this defendant has not any knowledge or information except as derived from the said bill, and therefore, he neither admits nor denies the same, but leaves the complainant to such proof thereof as he may be advised may be necessary and proper, but this defendant denies, that the said The Morris Canal and Banking Company was unable to pay the said debt so due to the said State of Michigan, because the said Company had long prior to the said third day of November, in the year 1839, become, and at all times thereafter continued to be insolvent. And as to the allegations of the said bill relative to the knowledge on the part of the said State of Michigan, through its proper officers, of the insolvency of the said The Morris Canal and Banking Company, and the efforts of the said State to collect said debt so due from the said The Morris Canal and Banking Company, the visit of Robert Stuart, Esquire, then Treasurer of the State of Michigan, to the office of the said Company, the purposes and times of such visits, the negotiations had by him with the President of the said The Morris Canal and Banking Company, the failure of such negotiations, the preparation and verification of the bill in chancery mentioned in the said bill of complaint, and the contents, statements, allegations, and prayer of the said bill in chancery, this defendant has not any knowledge or information, except as derived from the said bill of complaint, and therefore denies the same, and he claims and insists that the same are irrelevant and wholly immaterial in view of the facts of the case and the objects for which this suit is instituted. He further denies, that the said Robert Stuart was the authorized agent of the State of Michigan, for the purpose of filing the said bill in chancery, or making the statements or charges therein contained, or of instituting any suit whatever, in the name of the State of Michigan, against the said The Morris Canal and Banking Company.

This defendant, further answering, denies that the statements made in the said bill in chancery were true. He further denies the allegations of the said bill of complaint, relative to the notice had by the State of Michigan of the insolvency of the said The Morris Canal and Banking Company, and of the other matters whereof it is alleged in the said bill the said State of Michigan had notice, and as to the allegations of the said bill of complaint, relative to the true construction of the seventh section of the act of the State of New Jersey, of the 16th day of February, 1829, "to prevent frauds by incorporated companies," recited in the said bill, this defendant submits that the same are irrelevant and immaterial, and that he is not called upon or required to answer the same.

And as to the allegations of the said bill of complaint relative to

the assignment by the said The Morris Canal and Banking Company to the State of Michigan of the debt due to the said Company from the Long Island Railroad Company, and the mortgage given to secure the same, this defendant denies that the executive officers of the said The Morris Canal and Banking Company were prevailed upon without the knowledge, assent, or approbation of a majority of the directors of said Canal Company, to agree to assign the said debt due from the said The Long Island Railroad Company to the said Morris Canal and Banking Company, and this defendant avers the facts in respect to the said assignment to be as follows:

That the said The Morris Canal and Banking Company, being indebted as aforesaid to the State of Michigan, and there being due to the said The Morris Canal and Banking Company from the Long Island Railroad Company, on account of the aforementioned indebtedness of the said Railroad Company to the said Canal and Banking Company, and on the mortgage security aforesaid, the sum of about forty thousand dollars, the said The Morris Canal and Banking Company, acting by its president and cashier thereunto duly authorized, with the knowledge, approbation, and concurrence, and by the direction of a majority of the directors of the said Company, at the request of the treasurer of the State of Michigan, for that purpose the duly authorized agent of the said State, agreed to assign and transfer to the said State of Michigan for a good, valuable, and sufficient consideration as security in part for the payment of the aforesaid indebtedness of the said Company to the said State the aforesaid debt due to the said The Morris Canal and Banking Company from the Long Island Railroad Company, and the mortgage security aforesaid, given to secure the said debt; and thereupon the said The Morris Canal and Banking Company, having and having long had an office and place of business in the city of New York, at which by far the largest portion of the business of the said Company other than banking business had been and was transacted in the usual manner of carrying on and transacting mercantile business in the city of New York, on or about the ninth day of December, in the year one thousand eight hundred and forty, at the city of New York, and not within the territory or jurisdiction of the laws of the State of New Jersey, and in the ordinary and usual manner of conducting mercantile business, and assigning or transferring securities in the city of New York, by incorporated companies, and in the usual manner in which the said The Morris Canal and Banking Company conducted such business, the said The Morris Canal and Banking Company, acting by the president and cashier thereof, thereunto duly authorized, with the knowledge, approbation, and concurrence, and by the direction and under the authority of the board of directors of the said Company, executed and delivered to the State of Michigan for a valuable and sufficient consideration, the agreement or assignment mentioned in the said bill of complaint, bearing date the ninth day

of December, in the year 1840, of which a copy is annexed to the said bill, marked Schedule A., which said agreement was on the part of the said The Morris Canal and Banking Company, signed by the president and cashier thereof, and to which the common seal of the said Company was affixed by the said president and cashier, acting within the scope of the legitimate business of the Company, and within the general scope of their authority, by the concurrence, direction, and authority of the board of directors of the said Company, in accordance with the usages of the said Company, and without any notice to the said State of Michigan, or knowledge or information on the part of the said State of the provisions of the statute of the State of New Jersey, to prevent frauds by incorporated companies. And this defendant denies that Robert Stuart, mentioned in the said bill of complaint as the authorized agent of the State of Michigan, had, at the time of the execution and delivery of the said agreement or assignment, knowledge of the insolvency, utter or otherwise, of the Morris Canal and Banking Company, or that the said Company had no lawful right, power, or authority to sell, convey, assign, or transfer any of its property, debts, credits, or effects. And this defendant claims and insists, that upon the execution by the said The Morris Canal and Banking Company of the said agreement or assignment in manner aforesaid, and by virtue thereof, the State of Michigan became the actual legal holders and owners of the aforesaid debt so due as aforesaid from the Long Island Railroad Company to the said The Morris Canal and Banking Company, and of the mortgage given as security therefor as aforesaid, subject only to the provisions, terms, and conditions of the said agreement or assignment, and not in any way subject to the forfeiture, penalties, or provisions of the statute of the State of New Jersey "to prevent frauds by incorporated companies," or any other act of the Legislature of the State of New Jersey whatsoever.

This defendant, further answering, says, that whether the State of Michigan treated the said agreement as a mortgage, or caused the same to be recorded as alleged by the said complainant in his said bill, this defendant has no knowledge or information, except the statements to that effect in the said bill, and neither admits nor denies the same, but leaves the complainant to his proof thereof, if such proof shall be deemed material and proper; but this defendant denies that the recording of the said agreement, if the same was recorded as alleged in the said bill, was notice to all persons and parties of the nature and contents of the said agreement, and that the said Abraham G. Thompson and the said George B. Fisk had actual personal knowledge, information, or notice of the said agreement, and of its nature and contents, or that the said The Long Island Railroad Company had such knowledge, information, or notice, except as the same may have been derived from the subsequent transactions between the parties in respect to the aforesaid debt and mortgage security.

This defendant further answering, denies such and every, the several allegations of the said bill of complaint relative to the operation and effect of the said agreement and the interest or title acquired or passed under or by virtue of the same. He further submits and respectively insists, that it is immaterial whether or not the said The Morris Canal and Banking Company or the receivers thereof, had knowledge or notice of the intended sale of the said debt against the Long Island Railroad Company or the security therefor by the said State of Michigan as alleged in the said bill of complaint.

This defendant further answering, admits the clerical error in the said agreement mentioned in the said bill.

This defendant further answering, denies that the assent of the said The Morris Canal and Banking Company or the persons properly vested with the same, was never given or in any way obtained to the aforesaid disposition and transfer of the said debt due as aforesaid to the said Company from the Long Island Railroad Company, and the mortgage security thereof aforesaid; on the contrary thereof, this defendant alleges and insists, that the said The Morris Canal and Banking Company, by its duly authorized officers and agents acting within the scope of the legitimate business of the Company, and of their own authority as agents of the Company, expressly assented to the aforesaid disposition and assignment of the said debt and security, and legally signified such assent by the execution and delivery of the said agreement and assignment in manner and form as hereinabove peculiarly described and set forth; and this defendant denies, that the State of Michigan held no right, claim, or title to the said debt and security; on the contrary thereof, he claims and insists, that the title of the State of Michigan to the said debt and security by virtue of the aforesaid agreement or assignment was valid and effectual in equity and in law, and sufficient for all purposes to enable the State of Michigan, in pursuance of the provisions of the said agreement or assignment, to transfer and convey a valid and effectual title to the said debt so due as aforesaid, from the Long Island Railroad Company unincumbered of any rights or claims of the said The Morris Canal and Banking Company to the creditors thereof, or of any person or persons who might thereafter by any pretended operation of the laws of the State of New Jersey, claim to have become vested in the same.

This defendant further answering, submits and respectfully insists, that the allegations of the said bill of complaint relative to the act of the Legislature of the State of Michigan, in relation to the five million loan, the report of Robert Stuart to the Governor of the said State, the communication of the said report by the Governor to the Legislature of the State, and the printing and publication of the same, are immaterial and irrelevant to the purposes of this suit, and that this defendant ought not to be required to answer the same, and he claims that the printing and publication of the said report as alleged in

the said bill of complaint were notice of the fact and circumstances as claimed and charged in the said bill.

This defendant further answering, denies that on the ninth day of December, in the year 1840, the Morris Canal and Banking Company had suspended its ordinary business and had become insolvent in point of fact, and also, within the meaning of the act of the State of New Jersey, "to prevent frauds by incorporated companies," as in the said bill of complaint is alleged.

This defendant further answering, admits that on or about the sixth day of March, in the year 1841, the officers of the said The Morris Canal and Banking Company obtained from the said The Long Island Railroad Company as additional security for the said debt, the additional mortgage of and upon the lands of the said Railroad Company, in the counties of Queens and Suffolk, and the other property of the said Railroad Company mentioned and described in the said bill of complaint, and that the said last-mentioned mortgage was, on the twenty-sixth day of April, in the year 1841, assigned to the State of Michigan as a further security for the said debt so due as aforesaid, from the said The Morris Canal and Banking Company to the said State of Michigan, and that the said mortgage and the said assignment thereof were duly recorded in the office of the clerk of the county of Kings, as in the said bill of complaint is alleged. But this defendant denies, that the said last-mentioned mortgage was assigned to the State of Michigan, by the officers of the Morris Canal and Banking Company, without the authority of the Directors thereof; on the contrary this defendant alleges that the said last-mentioned assignment was made and executed on or about the sixth day of March, in the year one thousand eight hundred and forty-one, at the city of New York, and not within the limits or jurisdiction of the State of New Jersey, by the said The Morris Canal and Banking Company, acting by its president and cashier thereunto duly authorized within the scope of the legitimate business of the said Company and within the scope of their own authority, with the knowledge, assent, and concurrence, and by the direction of the Board of Directors of the said Canal and Banking Company for a valuable and sufficient consideration and in accordance with the laws of the State of New York, and in the ordinary and usual manner of conducting mercantile business and assigning or transferring securities in the city of New York by incorporated companies, and in the usual manner in which the said The Morris Canal and Banking Company conducted such business, and without any notice to the said State of Michigan, or knowledge or information on the part of the said State of the provisions of the statute of the State of New Jersey, to prevent frauds by incorporated companies, which said assignment was signed by the president and cashier of the said The Morris Canal and Banking Company respectively, and to which said assignment the said president and cashier affixed the common seal

of the said Company by the assent and direction of the Board of Directors of the said The Morris Canal and Banking Company, in accordance with the usages of the said Company; and this defendant claims and insists, that upon the execution by the said The Morris Canal and Banking Company of the said last-mentioned assignment, in manner and form as above described, and by virtue thereof, the State of Michigan became the actual, legal holders and owners of the said last-mentioned mortgage, so as aforesaid made and executed by the Long Island Railroad Company to the said The Morris Canal and Banking Company without liability to any penalties, forfeitures, or provisions of the Statute of the State of New Jersey to prevent frauds by incorporated companies mentioned in the said bill of complaint, or to any other law or statute of the State of New Jersey, whatsoever.

This defendant further answering says, that he has not any knowledge or information, except as derived from the said bill of complaint, whether the several judgments mentioned in the said bill of complaint, or any or either of them, were recovered against the said The Morris Canal and Banking Company, and therefore neither admits nor denies the statements to that effect in the said bill, and leaves the complainant to such proof thereof as may be deemed proper. But he denies that the said The Morris Canal and Banking Company had, for a long time or for any time before the alleged recovery of the said alleged judgments, become insolvent and had suspended its ordinary business, and he submits that the statements of the said bill of complaint as to the appointment of a committee of the board of directors of the said The Morris Canal and Banking Company, to investigate its affairs, and the proceedings and report of the said committee, are irrelevant and immaterial, and that this defendant is not required to answer the same.

This defendant further answering says, that he has not any knowledge or information, except as derived from the said bill of complaint, whether Abraham Richards and David Selden, named in the said bill, filed the bill in Chancery against the said The Morris Canal and Banking Company, mentioned in the said bill of complaint, or whether the proceedings mentioned in the said bill were had in the said suit, or whether the decree recited in the said bill was entered in the said suit, or whether the persons named in the said decree were appointed receivers of the goods, chattels, credits, effects, and property of The Morris Canal and Banking Company as therein stated, and therefore neither admits nor denies the statements in respect thereto in the said bill of complaint, but leaves the complainant to his proof thereof as he may be advised; but this defendant denies that the said alleged decree in any way affected the aforesaid assignment by the Morris Canal and Banking Company to the State of Michigan of the debt aforesaid, so as aforesaid due by the said The Long Island Railroad Company to the said The Morris Canal

and Banking Company, and the mortgage security aforesaid thereof on the said assignment by the said The Morris Canal and Banking Company to the said State of Michigan of the said additional mortgage so as aforesaid given by the said The Long Island Railroad Company to the said The Morris Canal and Banking Company as additional security for the said debt, and he denies that among the effects, rights of action, and assets, so conveyed to and possessed by the said receivers, was the said debt due the said The Morris Canal and Banking Company by the said The Long Island Railroad Company, and the said security for the same.

This defendant further answering says, that he has not any knowledge of the change and substitution of a receiver alleged in the said bill, and leaves the said complainant to such proof thereof as may be proper; but he denies that among the property with which the said receivers became vested was the aforesaid debt due by the said The Long Island Railroad Company, and the security therefor.

This defendant further answering denies that the operation of the said decree arrested and suspended the rights of any and all persons from transferring the said debt so due as aforesaid by the said The Long Island Railroad Company from transferring the same, either because the assent of the said The Morris Canal and Banking Company to transfer the same had never been obtained, or for any other reason; and he denies that any assignee or purchaser of the said debt subsequent to the appointment of the said receivers could not become a bona fide purchaser thereof even without notice of the transaction in the said bill referred to.

This defendant further answering denies that the said receivers of the Morris Canal and Banking Company had no notice of the intention of the State of Michigan to dispose of the debt and mortgage aforesaid, so due and given by the said The Long Island Railroad Company to the said The Morris Canal and Banking Company, or of any action on the part of the said State to foreclose the equity of redemption of the said Canal and Banking Company therein; on the contrary, this defendant states the fact to be that the said receivers were duly notified of the intention of the said State of Michigan to dispose of the said debt and mortgages, and of all action of the said State to foreclose the equity of redemption aforesaid.

This defendant further answering admits the passing of the act of the seventeenth day of February, 1842, by the Legislature of the State of Michigan, alleged in the said bill of complaint. He further admits that on or about the eighth day of July, in the year 1842, The Long Island Railroad Company received a surrender of the mortgage on the chattels of the said Railroad Company, hereinabove and in the said bill of complaint mentioned, from the State of Michigan, and executed to the said State a new mortgage on the same chattels included in the said mortgage of the third day of November, 1839, which said two latter mortgages were signed by George B.

Fisk, as President of the said The Long Island Railroad Company, by order of the board of directors thereof; but this defendant denies that the said The Long Island Railroad Company, or the said George B. Fisk, the President of the said Railroad Company, knew that the State of Michigan had no legal title to or lawful authority to contract the said debt due as aforesaid by the said Railroad Company, or that the said George B. Fisk knew that the said State of Michigan had no right to receive the said mortgage, or that the said mortgage or the debt secured thereby belonged to the receivers aforesaid of the said The Morris Canal and Banking Company.

This defendant further answering denies that previously to or at the time the said Abraham G. Thompson purchased of the State of Michigan the aforesaid debt due by The Long Island Railroad Company, and the mortgage security thereof, the said Abraham G. Thompson knew the circumstances alleged to have been known by him in and by the said bill, and he denies the negotiation and agreement in respect to the sale of the said debt and securities by the State of Michigan alleged in the said bill; but he admits that on or about the twenty-fourth day of May, in the year one thousand eight hundred and forty-three, the State of Michigan caused the said debt and securities to be sold at public auction in the city of New York, and that on such sale the said debt and securities were struck off for the sum of twenty thousand dollars, and that the said Abraham G. Thompson became the purchaser thereof for that sum; and that on or about the thirtieth day of May, in the said year 1843, the said State of Michigan, by its agents for that purpose duly authorized, conveyed the said debt against the said The Long Island Railroad Company, and the mortgage security thereof aforesaid, to the said Abraham G. Thompson, in consideration of the said sum of twenty thousand dollars, which said conveyance or assignment was recorded as in the said bill alleged. And this defendant avers and states the facts in respect to the said sale to be that for a reasonable and proper period previous thereto, the said State of Michigan caused notice thereof, specifying the time and place of the said sale, to be published in several public newspapers and to be given to the directors, receivers, or other authorized agents of the said The Morris Canal and Banking Company; and that, pursuant to such notice, and without any arrangement or agreement between the said Abraham G. Thompson and the said State of Michigan, or the agents or officers of the said State, the said sale took place on the said twenty-fourth day of May, in the year 1843, the day specified in the said notice, at public auction, at the Merchants' Exchange in the city of New York, the place of sale in the said notice specified. That the said sale was fairly conducted, that a large number of persons were present at the said sale, that there were several bids for the said debt and securities, and that on such sale the said debt and securities were struck off for the sum of twenty thousand dollars, that being the highest bid for the same, and

that said debt and securities were thereupon assigned by the State of Michigan to the said Abraham G. Thompson as above stated and set forth, and not otherwise.

This defendant further answering, denies that the said Abraham G. Thompson previously to, or at the time he purchased the said debt and securities as aforesaid, knew or had been informed of the matters of which it is alleged in the said bill of complaint he knew or had been informed, or that he had any means or opportunity of knowing or becoming informed of such matters, and whether or not the said Abraham G. Thompson purchased the said debt and securities upon speculation, this defendant claims and insists, that he made the said purchase in good faith, for the consideration above expressed, actually paid; and that upon and after such purchase he became and was the actual *bona fide* holder and owner of the said debt so due as aforesaid by the Long Island Railroad Company, and of the mortgages given to secure the same, without liability to any claims of the receivers aforesaid of the Morris Canal and Banking Company, or to the claims of other persons by or under the law of the State of New Jersey, to prevent frauds by incorporated companies only, or under any other statute of the said State.

This defendant further answering, admits the change of securities and the execution of the mortgage on the fifteenth day of June, in the year 1843, by the said The Long Island Railroad Company to the said Abraham G. Thompson, alleged in the said bill, and filing of the same and the memorandums thereon, as therein alleged. But this defendant denies that the said Abraham G. Thompson knew that he had no legal title thereto, or that he took the said new mortgage with a view of defrauding the *bona fide* creditors of the Morris Canal and Banking Company. And this defendant avers that, in fact, he, the said Abraham G. Thompson, had a perfect legal title to the said debt and securities, and had not any reason to believe or suspect otherwise. This defendant further admits the execution by the said The Long Island Railroad Company to the said Abraham G. Thompson of the additional mortgage alleged in the said bill of the sixth day of December, in the year 1845, and the filing of the same as therein alleged. He further admits that the said Abraham G. Thompson received from the said The Long Island Railroad, the bonds mentioned in the said bill; whether the payments of principal and interest alleged in the said bill have been made, this defendant has not any knowledge or information, and therefore denies the same.

This defendant further answering says, that he has not any knowledge or information relative to the purchase by the said complainant of the judgments mentioned in the said bill of complaint, or the other transactions in relation thereto stated in the said bill, or whether the receivers aforesaid of the said The Morris Canal and Banking Company by order of the Court of Chancery, in the State of New Jersey, or otherwise, assigned, on or about the thirteenth day

of November, in the year 1845, to Skeffington Sanxay, mentioned in the said bill, the said debt due by the Long Island Railroad Company, or whether the said Skeffington Sanxay subsequently assigned the same to the said complainant; and therefore he neither admits nor denies the statements in respect thereto in the said bill, but leaves the complainant to such proof thereof as may be equitable and proper. This defendant, however, avers and insists that at the time of the said alleged assignment of the debt and securities, the same were not in the possession of the said receivers of the said The Morris Canal and Banking Company, but were in the possession of the said Abraham G. Thompson, under a valid title, to the exclusion of the said receivers; and that for that reason the said assignment, if such assignment took place, was illegal and void; and that the said debt and securities having previously to the commencement of the suit in the Court of Chancery of the State of New Jersey, in which the said receivers were appointed, been assigned by the said The Morris Canal and Banking Company; and having been at the time of the said alleged assignment by the said receivers, held adversely to the claim of the said receivers by the said Abraham G. Thompson, as assignee thereof, the said receivers had not the legal right, power or authority to assign the same.

And this defendant further answering, denies all and all manner of combination and confederacy in the said bill of complaint charged without, that any other matter or thing material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

Dated, New York, the 30th day of December, in the year 1854.

HENRY SHELDEN,
Executor, &c., of A. G. Thompson, deceased.

ISAAC DAYTON,
Sol'r and Att'y for defendant, Henry Shelden, Executor, &c., of Abraham G. Thompson, deceased.

A. L. JORDAN, *Of Counsel.*

And the said defendant, Henry Shelden, did also afterwards, by leave of the court, make a supplemental answer to said bill of complaint, in the words and figures following, that is to say:

New York Superior Court.

JESSE HOYT
against
HENRY SHELDEN, Executor of, &c., of ABRAHAM G. THOMPSON, deceased, impleaded with others.

The several Supplemental Answers of Henry Shelden, Executor of the last will and testament of Abraham G. Thompson, deceased, one of the defendants to the complaint of Jesse Hoyt, complainant.

This defendant, in this his supplemental answer to the plaintiff's said complaint in this action, by leave of the court, here for this purpose granted by an order of the General Term thereof, granted on the 13th day of December, A. D. 1856, says, that he put in his original answer to said complaint in due form of law, on or about the thirtieth day of December, eighteen hundred and fifty-four (being then ignorant of the supplemental matter hereinafter set forth), and served a copy thereof on the plaintiff's attorney; to which said original answer on file in the office of the clerk of this court, he prays leave to refer for the substance and contents thereof, and now for supplemental answer thereto, he says, that just previous to and in contemplation of the sale of the debt (with the securities thereof), originally due by the Long Island Railroad Company to the Morris Canal and Banking Company, and by the latter assigned to the State of Michigan, and caused to be sold by said State of Michigan, at public auction, in the city of New York, as mentioned in said original answer, at folio 56; he, the said Abraham G. Thompson, and one George Griswold, came to an agreement and understanding between themselves to become the joint purchasers of the said debt and securities, in case the same should be struck off at or below a certain sum by them named or agreed on, and that the said Abraham G. Thompson should do the bidding at such sale for them jointly and for their joint interest and benefit, and that upon such sale the said Abraham G. Thompson did so bid accordingly, and that said debt and securities were struck off to him as such bidder for the sum of twenty thousand dollars, that being the sum or below the sum by them, the said Abraham G. Thompson and George Griswold as aforesaid, named or agreed on, and that being the highest sum bid for said debt and securities at said public auction. And this defendant says that by said sale, the said Abraham G. Thompson and George Griswold became and were the joint purchasers and owners of said debt and securities, at and for the said price and sum of twenty thousand dollars, and that on or about the 30th day of May, A. D. 1843, the said State of Michigan, by its agents for that purpose duly authorized, conveyed the said debt against the Long Island Company and the aforesaid securities thereof, to the said Abraham G. Thomp-

son, for himself and the said Griswold, pursuant to said sale, in consideration of the said sum of twenty thousand dollars, which was actually and in good faith paid therefor, by said Abraham G. Thompson and George Griswold. And this defendant says that the change of the securities, and the execution of the mortgage on the 15th day of June, A. D. 1843, by the Long Island Railroad Company to the said Abraham G. Thompson, stated in the said original answer, at folio 63, were done for and enured to the joint interest and benefit of the said Abraham G. Thompson and George Griswold, and that the legal title to the said debt and securities in the said Abraham G. Thompson, as mentioned in the said original answer at folio 64, was held by him for his own benefit and interest, for the benefit of the said George Griswold, for their joint interest, and further, that the bonds received from the Long Island Railroad Company by the said Abraham G. Thompson, as mentioned in the said original answer, in the latter part of folio 64, were executed to and received by him, the said Abraham G. Thompson, for the joint interest and benefit as aforesaid of himself and the said George Griswold.

And this defendant for further supplemental answer says, that after the sale at public auction of the said debt and securities, and the purchase thereof by the said Abraham G. Thompson, for the joint interest and benefit of himself and the said George Griswold, and after the said Abraham G. Thompson and George Griswold became and were the joint owners of the said debt and securities as hereinbefore stated and set forth, and after the said George Griswold had taken the possession of and converted his said joint right, title and interest in the said debt and securities to his own use; and after the said Abraham G. Thompson and George Griswold had become and were jointly liable to the said plaintiff, Jesse Hoyt, for the amount of said debt and securities, if either of them ever were or had been so liable (but which liability this defendant, upon the advice of his counsel and his own belief, expressly denies), he, the said plaintiff, for and in consideration of the sum of fifteen thousand dollars, to him in hand paid by the said George Griswold, by deed executed to the said George Griswold, under his hand and seal, bearing date on the 17th day of November, A. D. 1853, did remise, release and forever discharge the said George Griswold, among other things, from all actions and causes of action, claims and demands in law and equity, for, or on account of the aforesaid debt and securities against the Long Island Railroad Company, and did also, by said deed, remise, release and forever discharge the said George Griswold of and from all actions and causes of action, claims and demands in law and in equity, for, or on account of any and all sales, conveyances, assignments and transfers of the estate, effects, choses in action, goods, chattels, rights or credits, lands or tenements, of the said Morris Canal and Banking Company, which were made to the said George Griswold, in contemplation of the insolvency of the said Company,

or after its actual insolvency, or after it had suspended its ordinary business for want of funds to carry on the same, among which last-mentioned estate, effects, choses in action, rights and credits of said Morris Canal and Banking Company, were included the aforesaid debt and securities against the Long Island Railroad Company. And this defendant is advised and humbly insists, that by the legal operation and effect of said deed of release and discharge from the said plaintiff to the said George Griswold, he, the said Abraham G. Thompson, in his lifetime was, and this defendant, as his executor since his death, became and is legally released and discharged from any and all liability to the said plaintiff, for, or on account of said debt and securities against the Long Island Railroad Company, if any such liability ever existed, which, under the advice of his counsel and on his own belief as aforesaid, he denies ever did exist, and he prays, as in his said original answer he prayed, to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

CHARLES S. JORDAN,
Atty. for Deft. Shelden.

City and County of New York, ss.

Henry Shelden, executor, &c., of Abraham G. Thompson, deceased, the above named defendant, being duly sworn, says, that the foregoing supplemental answer is true of his own knowledge, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

HENRY SHELDEN.

Sworn to before me, this 17th day of Decr. 1856.
WM. SINCLAIR,
Com. of Deeds.

Superior Court.

JESSE HOYT
agt.
HENRY SHELDEN, Executor, &c., and others.

City and County of New York, ss.

William Marshall, of said city, being duly sworn, says, that on the 17th day of December, 1856, he served a copy of the foregoing answer, on S. Sanxay, Esq., the attorney for the plaintiff in the foregoing answer named, by delivering the same to and leaving the same with a person in charge of the office of the said attorney in his absence.

WILLIAM MARSHALL.

Sworn to before me this 18th day of December, 1856.
WILLIAM THOMPSON,
Com. of Deeds.

And the issue being thus joined by the said complaint, answer, and supplemental answer, the action came on to be tried before the Hon. Murray Hoffman, one of the Justices of this Court, without a jury, at a special term held in the City Hall of said city, in June, 1856; the plaintiff and defendant respectively to maintain and prove the said issues on their parts, produced in evidence certain testimony which had theretofore been taken before Abraham Underhill, Esq., a referee for this purpose duly appointed by an order of the Court in these words:

New York Superior Court.

JESSE HOYT
v.
HENRY SHELDEN, Executor, and others.

On reading and filing consent, signed by the respective attorneys in this action, and on motion of S. Sanxay, attorney for plaintiff, it is hereby ordered that the above entitled action be and the same is referred to Abraham Underhill, Esq., counsellor-at-law, of the city of New York, to take the testimony herein, and report the same to this Court.

New York, April 27, 1855.

Enter this, J. S. B.

(A copy.)

GEO. H. E. LYNCH, *Clerk.*

Which said testimony was in the words and figures following, to wit:

New York Superior Court.

JESSE HOYT,
v.
HENRY SHELDEN, and others. } Testimony taken before referee.

Testimony taken in pursuance of the annexed order before the referee therein named, at his office, No. 4 *New Street, N. Y., May* 17*th*, 1855.

Plaintiff appears in person and by Mr. Sanxay and Mr. Evarts; defendants Honora Fisk and others, executors of George B. Fisk, deceased, appear by Abijah Mann, Jr., defendants; the Long Island Railroad Company by Weeks and De Forest, defendants; Henry Shelden, Esq., by Isaac Dayton, as their counsel. Plaintiff puts in evidence the bill in equity in the Court of Chancery in the State of New Jersey, and the proceedings thereon for the appointment of receivers of the Morris Canal and Banking Company, &c., Stephen P. Brittan, Alexander C. M. Pennington and Elias D. B. Ogden, being such receivers. Title of the suit is "Abraham Richards and David Selden *v.* The Morris Canal and Banking Company." It is marked

Exhibit A. Defendants object to this Exhibit A as incompetent testimony; that it is not a record, and is not exemplified in a manner to entitle it to be received as evidence. Question reserved, and the evidence admitted. Plaintiff also puts in evidence a transcript in last-mentioned suit of proceedings and order for sale of certain assets of said Morris Canal and Banking Company by the receivers; they are marked Exhibit B and C. Objected to on the same grounds as Exhibit A; same disposition. Plaintiff also puts in evidence a bill in equity, entitled "In Chancery," and addressed to the Chancellor of the State of New Jersey, in the suit of The State of Michigan *v.* The Morris Canal and Banking Company, verified by Robert Stuart on the 23d day of October, 1840, as contained in pages 276 to 308, both inclusive, of the volume of public documents of the State of Michigan, printed by George Dawson, State printer for the State of Michigan, for the year 1841. It is marked Exhibit D, on page 276. It is objected to on ground of its incompetency, and that it is not legally proved by all the defendants, and as irrelevant. Question reserved and evidence admitted. It is admitted by all the defendants, that said volume was printed by George Dawson: it is labelled on back "House Documents, Michigan, 1841," and contains the paper above mentioned. Plaintiff also puts in evidence an agreement dated 9th December, 1840, between the State of Michigan and the Morris Canal and Banking Company, as contained in pages 271 to 276, both inclusive, of the said volume. Same objection and disposition as before. It is marked Exhibit E.

Samuel A. Foot, a witness produced on the part of the plaintiff, this 17th May, 1855, being duly sworn, testifies, that in the year 1840, he was engaged in the practice of the law in the city of New York, and for many years previous and subsequent thereto. Ques. Did you know in the year A. D. 1840, Robert Stuart, Treasurer of the State of Michigan? (Objected to, as to last part of question, on ground that it assumes that Mr. Stuart was such treasurer; question reserved.) Ans. I did. Ques. Were you at that time aware of a claim made against the Morris Canal and Banking Company by the State of Michigan? Ans. I was. Ques. What steps were taken within your knowledge by the said State towards the enforcement of their claim? Ans. I am not at this time able to recollect all the steps which were taken by Mr. Robert Stuart, claiming to act on behalf of the said State, to enforce that claim, but I recollect some of them—one was an urgent demand by Mr. Stuart on the Company for payment or security; another negotiation; another the filing of a bill in the Court of Chancery of the State of New Jersey, and those are all I now recollect; they and the other steps resulted in the obtaining securities for the same. Ques. Who acted as solicitor and counsel for the State of Michigan in this proceeding, and by whose employment? Ans. If you mean by proceeding the suit in Chancery mentioned, Mr. Asa Whitehead was the solicitor, and I was

the counsel; if you mean by proceeding, the steps to enforce the claim, Mr. Henry E. Davies, my then partner, was the solicitor, and I was the counsel. Ques. Was any agreement made between the State and the Company as the result, or in consequence of the steps and proceedings you have mentioned? Ans. I think there was, but my memory is not full in regard to it. Ques. What was done with the original bill in the suit in Chancery? Ans. I do not recollect. Ques. Was it used before the Court? Ans. I will correct my former answer in respect to filing that bill; I should have said preparing and exhibiting a bill in Chancery; and I now say it was used, I think, by presentation to the Chancellor, according to my best recollection; but whether it was so presented or not, I have no personal knowledge, and never had, as I now recollect. Ques. Do you know whether the bill was filed, or whether it was retained by yourself, or by Mr. Whitehead, or by Mr. Stuart? Ans. According to my present recollection, I never had possession of the bill after it was perfected; nor, as I now recollect, did I ever know who had the actual possession of it after it was perfected and used. Ques. Please now state by whose employment the solicitor and counsel you have named above acted. Ans. Mr. Davies and myself, by the retainer of Robert Stuart, acting on behalf of the State of Michigan. In respect to Mr. Whitehead, all I ever knew on that subject was, Mr. Stuart consulted with him, and Mr. Whitehead acted in accordance with Mr. Stuart's directions. Ques. Please look at the bill, Exhibit D, now shown you, and say whether that is a copy of the bill prepared and exhibited as you have stated. (Objected to, on the ground that no foundation is yet laid for the introduction of secondary evidence; question reserved.) Ans. I cannot say whether it is or not; I have not at this time a sufficient recollection of the contents of that bill to say whether this is a copy or not. Ques. Please look at this paper now shown you, and say whose handwriting it is, and when it was prepared, and what, if any, relation it had to the bill in Chancery of which you had spoken, or its preparation. (Objected to, on the ground it is incompetent evidence, not being a perfect instrument, or appearing to have any relation to the action; question reserved.) Ans. The paper is in my handwriting, and, I think, must have been written in the autumn of 1840, and purports to be amendments to a bill in Chancery addressed to the Chancellor of the State of New Jersey by the State of Michigan against The Morris Canal and Banking Company; I presume they are amendments to the draft of the bill of which I have spoken; but whether they are or not in fact, I am unable to say; but I have no recollection of ever preparing amendments to any other bill to be presented to the Chancellor of New Jersey except bill mentioned, and especially not in that year, 1840. This last paper is marked Exhibit F.

SAML. A. FOOT.

Sworn this 17th May, 1855, before me,

ABM. UNDERHILL, *Referee.*

Plaintiff also puts in evidence a joint resolution of the Legislature of the State of Michigan, approved January 20th, 1840, from volume purporting to be printed laws of that State for the year 1840. It is marked Exhibit G; it is objected to as incompetent; question reserved; it is admitted said volume was printed by George Dawson.

Plaintiff now put in evidence an assignment from the receivers of the Morris Canal and Banking Company, before named, to Skeffington Sanxay, dated November 13th, 1845.

Lorenzo Hoyt, sworn by me for the plaintiff, says he is a lawyer, has practised in this city upwards of ten years. I knew George B. Pollock, the subscribing witness to the last-mentioned assignment; he was for a long time clerk in the office of the plaintiff, and sometimes wrote for me in my office; he left this city in the summer of the year 1846, I think, to go to Illinois; he has never returned; I understood he died during that year, within a year after he left here; I have never heard of or seen him since; I know his handwriting perfectly; his signature, as a subscribing witness, is in his handwriting; the signature also of Mr. Pollock, as a subscribing witness of this other paper now shown me, is in his handwriting; the first paper is marked Exhibit H and H (1). The second paper is marked Exhibit I; I know the handwriting of Mr. S. Sanxay; this is his signature to the paper now shown me; it is marked Exhibit K; his signature also to Exhibit I is genuine.

LORENZO HOYT.

Sworn this 17th of May, 1855, before me,
ABM. UNDERHILL,
Referee.

James Kay, a witness, sworn by me for the plaintiff, testified: Knows Elias B. D. Ogden, Stephen P. Brittan, Alexander C. M. Pennington, and has seen them write; being shown their signatures to Exhibit H, he says those are their signatures respectively and genuine; being shown also the signatures to Exhibit H (1), he says they are the genuine signatures respectively of Stephen P. Brittan and Alexander C. M. Pennington; Messrs. Pennington and Ogden reside in the State of New Jersey, and did at the time of execution of said instruments; Mr. Brittan is now dead.

JAMES KAY.

Sworn this 17th May, 1855, before me,
ABM. UNDERHILL,
Referee.

The further hearing is adjourned to May 23d, at 4 o'clock, P. M.

1855, May 23d. Met. All the parties appear as before.

Plaintiff now puts in evidence the message of the Governor of the State of Michigan, as contained in pages 266 to 268, and the report of Robert Stuart, Treasurer of said State, as contained in 268 to

271 of the same printed volume of public documents before presented. They are marked Exhibits L and M.

The defendants object to the same on the same grounds stated as objections to the former testimony from same volume—question reserved as before; plaintiff now put evidence as a law of the Legislature of the State of Michigan, passed on the 19th April, 1839, for the appointment of a State printer. It is marked Exhibit N—same objection by the defendants to this evidence as that to the last—same disposition.

It is consented by all parties, that the copy produced of the Exhibits H, H (1), I, and K, shall be substituted for the original exhibits, and be marked as such exhibits. They are so marked—such originals to be produced on the argument or further examinations, if required, upon written notice to that effect.

James Kay, resumed by plaintiff. Witness says he was in the employment of the Morris Canal and Banking Company, from early part of the year 1838, until the time the receivers came in, in 1842; the book now before witness is the book of minutes of the Morris Canal and Banking Company; it is book D of those minutes; the entries in it are in the handwriting of various parties; part of them are in witness's handwriting; witness's entries commence on the 5th of March, 1838. Q. Have you examined this book of minutes, in reference to entries contained therein, relative to the debt of the Company to the State of Michigan? A. I have. Q. Of what are the minutes in this book contained? A. The transactions of the Board of Directors at their different sittings. Q. What entries appear in the book relative to this debt of the Company to the State of Michigan? (Objected to by defendants on the ground that no foundation is laid for admitting the contents of this book.) A. There is none, except that of the 31st December, 1849, on page 313. (Plaintiff now puts said entry in evidence; it is marked Exhibit O.) Q. What entries of meetings are there between the 25th of March and 22d July, 1841, excluding meetings of those dates? (Objected to on the ground that if the book is evidence at all, it speaks for itself.) Witness says: They are June 10th, June 12th and 17th, July 17th and 21st. (Plaintiff now puts in evidence the minutes of those meetings, and they are marked Exhibit P; they are objected to by defendants as incompetent and not sufficiently proved, and taken subject to such objection.) (Plaintiff now puts in evidence part of the minutes of the meeting of September 22d, 1840, p. 296 of said book B., containing the entry of the election of Mr. George B. Fisk as a director. Same objection; disposition as before.) It is marked Exhibit Q. Q. Have you examined this book of minutes in reference to the attendance of Mr. George B. Fisk at meetings as entered therein? (Defendant objects.) A. I have. Q. At what meetings is his attendance noted on the minutes? (Objected to by the defendants that it is not

competent to prove such attendances, and as irrelevant: answer taken subject thereto.) A. The 15th October, 1840, p. 308; the 10th December, 1840, p. 313; the 18th February, 1841, p. 321; the 25th March, 1841, p. 328; the 22d July, 1841, p. 334; the 25th August, 1841, p. 343; the 24th September, 1841, p. 347; the 7th October, 1841, p. 352; the 8th October, 1841, p. 359; the 14th October, 1841, p. 365; the 15th October, 1841, p. 373; the 28th October, 1841, p. 375. Q. The paper now shown you, look at same, and say if you are subscribing witness to it? A. I am one of them; and the signature, James Kay, thereto, is mine. Q. Was it executed by the parties in your presence? A. It was, and I then subscribed my name, as a subscribing witness thereto. (This paper is marked R for identification.) Q. Look at paper now shown you, and state if you are subscribing witness to it? A. I am one of the subscribing witnesses to it; it was executed by the parties thereto in my presence; and I then subscribed my name, as a subscribing witness thereto. (It is marked for identification S.) Q. Look at the paper now shown you, and say in whose handwriting the filing indorsement of receipt thereon is? A. It is that of Edward R. Biddle, the President of the Morris Canal and Banking Company, at the date of the indorsement, October 9th, 1840. (It is put in by plaintiff, and marked Exhibit T.) (This Exhibit T is objected to by defendants on ground that it is irrelevant.)

James Kay was, on said 23d May, 1855, cross-examined by the defendants as follows: Was not secretary of the Morris Canal and Banking Company; it had no secretary. Witness was employed to attend to the bills of the canal, relative to the canal tolls, collectors' accounts, and filling up bank bills, copying letters, &c. Q. Are all the entries in this book of minutes which you have specified, and which have been offered as Exhibits, in your handwriting? A. Exhibit O, at page 313, is not in my handwriting: it is in the handwriting of Isaac Gibson; of Exhibit P, all are in my handwriting, except the entries of the meetings of the 17th and 21st July, 1841, which two entries last mentioned are in the handwriting of said Isaac Gibson; Exhibit Q, the handwriting is that of Isaac Gibson; the minutes of meetings, noting the attendance of George B. Fisk, from the 15th October, 1840, to and including 25th August, 1841, are in the handwriting of Mr. Gibson; the other minutes, containing the attendance of Mr. Fisk, are in my handwriting. Q. From what statements were the entries made which are in your handwriting? A. From sheets of paper on which the minutes of the board were taken down by the cashier, Isaac Gibson; I don't know anything more about it, except that Mr. Gibson told me that those were the minutes, and directed me to copy them into the book of minutes, which I did; the meetings of the Board of Directors were held in William Street,

in the city of New York, at the office of the agency of the Company, No. 45, and on several occasions at Jersey City.

James Kay was examined by plaintiff on May 23d, 1855, on the redirect, as follows: Q. Where was your place for performing your duties in the Company which you have spoken of? A. Both at the office at the agency in William Street, and at the Banking-house, Jersey City.

JAMES KAY.

Resworn this 23d May, 1855, before me,
ABM. UNDERHILL,
Referee.

Adjourned to May 30th, at 3½ o'clock, P. M.

May 30th, 1855. Met pursuant to adjournment. All the parties appeared as before.

Asa Whitehead, sworn for plaintiff: Is an attorney and counsellor at law, practising at Newark, New Jersey, in the Court of Chancery and other Courts of that State, and has been for thirty years and upwards. Q. Did you know, in the year 1840, Robert Stuart, Treasurer of the State of Michigan? A. In the year 1840 I was called upon by Mr. Robert Stuart, who represented himself to be Treasurer of the State of Michigan; he acted as such, in relation to some business he desired me to transact, and I suppose he was so. Q. Were you then or did you then become aware of a claim made against the Morris Canal and Banking Company by the State of Michigan? A. I was informed of such a claim by Mr. Stuart, and I knew of such a claim before that time. Q. What steps were taken, within your knowledge, by or in behalf of the State of Michigan, towards the enforcement of such claim? (Objected to by defendants, on ground that it is irrelevant and incompetent.) A. Mr. Stuart employed me as solicitor and counsel for the State of Michigan, to file a bill in Chancery against the Morris Canal and Banking Company, which bill was prepared by me, the original draft of which was submitted to Mr. Samuel A. Foot; amendments were prepared by him to that bill, and were afterwards incorporated into the bill; it was, after being sworn to by Mr. Stuart, presented to the Chancellor, and an application was made for an injunction and the appointment of a receiver; I am not certain whether the proceeding was by giving notice to the Company of this application, or by obtaining an order from the Chancellor, why the injunction should not be granted and a receiver appointed; the hearing before the Chancellor was postponed, I think more than once; in the mean time, as I understood from Mr. Stuart, negotiations were carried on between him and the officers of the Company for a settlement or arrangement, which resulted, as Mr. Stuart afterwards informed me, in an

arrangement, and the proceedings were in consequence dropped. (The statements of Mr. Stuart objected to in time, that his statements are not evidence.) Q. Do you know whether this bill was filed in the Court of Chancery, and if not, what became of the original? A. My impression is, that the bill was not filed, and that by the course of proceeding it was not usual to file a bill until an order was made upon it; my impression is, that the bill which I had was delivered to one of the officers of the Company; I suppose the bill so delivered was the original. Q. Please look at the paper now shown you, and say if this is the draft of the bill referred to by you, as you have just stated? A. This is the draft of the said bill; it is in my handwriting, and was prepared by me. Q. Did you confer with any one representing the State of Michigan, or receive instructions from any one, in relation to the averments or allegations in the bill? (Objected to.) A. I conferred with Mr. Robert Stuart, who represented the State of Michigan, and prepared the bill under his instructions. (This draft bill is marked Exhibit U.) Q. What is the paper now shown you? Say what you know of it. (The paper is Exhibit F., heretofore produced.) A. After I had made the draft, I had a conference with Mr. Samuel A. Foot, and with Mr. Stuart, in the city of New York; this paper, Exhibit F., contains amendments to that bill, I think prepared in the handwriting of Mr. Foot, in that conference. Q. Under whose direction was the bill engrossed for verification? A. It was engrossed in my office, under my directions, as I have no doubt it was in my hands after the said amendments of Mr. Foot were incorporated in it. Q. Did you know Mr. O. W. King, in October, 1840? A. Yes, sir. Q. Where did he reside, or have his office, and what public function did he discharge? A. Mr. King—his name was Orange W. King—resided in the city of Newark, N. J.; his office was in Broad Street, near my office; he was then a practising lawyer, and a Master of the Court of Chancery of the State of New Jersey, and is now deceased. Q. Were you present when Mr. Stuart swore to said bill? A. I have no recollection upon that subject. Q. After the bill was engrossed, was it read by or to Mr. Stuart? A. I have no doubt that it was; that was my universal practice, to read bills to my clients before they were sworn to; I don't think I ever prepared a bill which I did not read to the complainant or party who was to swear to it. Q. At this conference upon the draft of the bill, at which the amendments were prepared, was Mr. Stuart present and taking part therein? A. He was present, and took part in that conference; whether he was present the whole of the time I can't state certainly. Q. Is Mr. Stuart still living? A. I have heard that he was dead; I think I saw an account of it in some paper; and I have heard it from a family at Morristown, where I understood a daughter of his visited. Q. By whom were you retained, and by whom were your fees paid in this business? A. I was employed by Mr. Robert Stuart, on the part of the State

of Michigan; after the business was concluded, I was informed by Mr. Stuart that the Morris Canal and Banking Company would pay my charges; the Company did pay the same.

Upon hearing his foregoing testimony read, the witness request to state that there were certain agreements inserted in the said bill, as finally engrossed and sworn to, which do not appear in the drafts and amendments before mentioned, otherwise than there are blanks left for their insertion. Cross-examination waived.

ASA WHITEHEAD.

Sworn this 30th May, 1855, before me,

ABM. UNDERHILL,
Referee.

Abraham W. Kenney, sworn for plaintiff: Resides at Newark, New Jersey; has ever since he was born. Q. Were you ever a director in the Morris Canal and Banking Company? A. I was; I became so in 1840, in the month of September, I think; am not certain as to the month. Q. Did you know Mr. George B. Fisk? A. I did. Q. Was he director at the same time? A. He was a director at the same time that I was, and he was such before I was appointed. Q. Did you act upon any committee of investigation of the affairs of the Company? A. I did. Q. Of whom did that committee consist, and at about what time did they act? A. The committee consisted of Mr. James B. Murray, Mr. Fisk, and myself; it was in the winter of 1840 and 1841, and either towards the end of the year 1840 or early in 1841. Q. What sort of an examination did this committee make, and with what object? A. We were appointed to make a thorough examination of the affairs of the Company; we did make it; we made a full report in writing of the pecuniary affairs of the Company; by the committee, unanimously. Q. What did you find its condition on that examination, as respects its solvency or insolvency? (Objected to on ground that report itself is the best evidence.) A. Irretrievably insolvent. Q. For what time preceding your examination did such condition of the Company appear? (Objected to for same reasons.) A. I cannot tell how long they had been insolvent.

Cross-examination reserved.

A. W. KINNEY.

Sworn this 30th day of May, 1855, before me,

ABM. UNDERHILL,
Referee.

Adjourned to June 5th, 1855, at 3 o'clock.

June 5th, 1855.—Met pursuant to adjournment. All parties appeared as before.

David Selden, sworn for plaintiff: Witness does business in the

city of New York; his family resides at New Haven. Q. Had you at any time, and when, any obligations or bonds of the Morris Canal and Banking Company? A. I had; I had them in the year 1840. Q. At what time in 1840 did any of those obligations mature? A. On the 31st March, 1840; one bond for thirty-five thousand five hundred dollars, which was protested for non-payment. Q. Was that debt ever paid; if so, when? A. The debt was never paid to me; but I did recover, by process of law and sale, under execution, about forty-three hundred dollars in this State. Q. What other debt had you against the Morris Canal and Banking Company, in the year 1840? A. I had three other bonds, together amounting to thirty-five thousand five hundred dollars, which fell due on the 31st March, 1841; Abraham Richards was interested with me in all the foregoing bonds. Q. Were those last-mentioned three bonds ever paid? A. Judgments were recovered in New Jersey on two of these bonds, amounting together to twenty-five thousand dollars,—one of these two bonds, amounting to ten thousand dollars, was sued in the names of Henry Yates, Thomas G. Talmage, and William Curtis Noyes, as trustees of the North American Trust and Banking Company,—and I bought a judgment in favor of William S. Nichols, for five hundred and forty-three $\frac{84}{100}$ dollars, debt, damages, and costs, against the Morris Canal and Banking Company; I received twelve thousand eight hundred and thirty-five $\frac{24}{100}$ dollars in New Jersey, on account of all the judgments that I held; among those was one obtained in New Jersey, on the first judgment I obtained in New York. Q. How was this money obtained? A. The four thousand three hundred dollars first spoken of was received from the sheriffs of New York and Orange County, in this State; the residue I received from the sheriffs of different counties in New Jersey, collected on the judgments.

(All the foregoing questions and answers of this witness were objected to in time, as irrelevant and incompetent, reserving the right to objections on other grounds.)

DAVID SELDEN.

Sworn this 5th June, 1855, before me,

ABM. UNDERHILL,
Referee.

George Dawson, sworn for plaintiff: Q. Where do you reside? A. I reside at Albany; I am one of the editors of the "Albany Evening Journal." Q. Where did you reside in the years 1840 and 1841? A. In Detroit, Michigan, and also for parts of the years 1839 and 1842. Q. Did you hold the office of State Printer during any part of that time, and if so, what? A. Yes, sir; I held it during the years 1840 and 1841. Q. Please look at the volume now shown you, and state if you printed it as State Printer for Michigan? A. I did.

(The book now shown witness is the book heretofore referred to as House Documents, Michigan, 1841.)

Q. Did you know Robert Stuart, at that time an officer in the State of Michigan? A. Yes, sir. Q. What office did he hold? A. Treasurer of the State of Michigan. Q. Do you know whether he is dead? A. He is dead, sir.

(All the questions to and answers of this witness were objected to in time, on same grounds as those made to the last witness.)

GEORGE DAWSON.

Sworn this 5th day of June, 1855, before me,

ABM. UNDERHILL,
Referee.

Plaintiff produces certificate marked Exhibit V, and it is agreed on the part of the defendants, Henry Shelden, executor, &c., and the Long Island Railroad Company, that said certificate shall be received with same effect, as if the clerk certifying thereto had appeared and sworn to the facts stated in the certificate.

James Kay recalled by plaintiff. Q. (A paper is shown witness.) Please say if the paper now shown you was executed in your presence by the Morris Canal and Banking Company? A. It was, and witness subscribed his name as a witness at the time. (This paper is marked Exhibit W.) Q. When was the last payment of interest made by the Morris Canal and Banking Company upon their issue of sterling bonds? A. On the first of January, 1840. (The Exhibit W was objected to in time.) Q. What amount of that issue of sterling bonds was there outstanding? A. The amount was two hundred and eighty-four thousand nine hundred pounds sterling, equivalent to one million two hundred and sixty-six thousand two hundred and twenty-two $\frac{21}{100}$ dollars. Q. Was any payment made on the principal or interest of these bonds after the first of January, 1840, and before the appointment of receivers. A. There was not. (All the testimony of this witness is objected to in time, as before.)

JAMES KAY.

Re-sworn this 5th June, 1855, before me,

ABM. UNDERHILL,
Referee.

Adjourned to Monday, June 11th, 1855, at 3½ P.M.

Theodore Romeyn sworn for plaintiff: In 1847 was a practising lawyer in Detroit, in the State of Michigan, and had been from the year 1838, and continued so until the spring of 1848. Detroit was the capital of that State in 1847. Digby V. Bell was Auditor-General, Gideon O. Whittemore was Secretary of State, and George B.

Cooper was the State Treasurer of Michigan in December, 1847. (Right of cross-examination reserved.)

THEODORE ROMEYN.

Sworn this 11th June, 1855, before me,

ABM. UNDERHILL,
Referee.

Plaintiff puts in evidence a paper, which is now marked Exhibit X, and defendants admit due execution of the same by Abraham Richards and David Selden; it is also consented that a copy of same be substituted for the original, and marked in like manner, the original to be produced if required at any time; (this last Exhibit X objected to in time); plaintiff, also, now puts in the two papers marked heretofore R and S, and they are made Exhibits R and S; and it is also consented that copies of same be used and substituted in their place.

Adjourned to June 15th, at 3½ P.M.

June 15th, 1855.—Met pursuant to adjournment. All the parties appeared as before.

Thomas H. Acres sworn for plaintiff: Witness says he is a clerk in the office of William Curtis Noyes, in this city, and has been for many years; witness says he knows H. Dwight Williams, the subscribing witness to the paper now shown him, and that he also knows his handwriting, and also the handwriting of Thomas G. Talmage, Henry Yates, William Curtis Noyes, and David Selden, the partners to said paper, and that their respective signatures to said papers are genuine (said paper is marked Exhibit Y); witness says said H. Dwight Williams resides in the State of Ohio. (It is consented that a copy of said Exhibit Y be substituted for original, the original to be produced on call.)

THOS. H. ACRES.

Sworn this 15th June, 1855, before me,

ABM. UNDERHILL,
Referee.

David S. Ives sworn for plaintiff: Witness says, in June, 1843, he was Secretary of the Long Island Railroad Company, and was before and after that time; witness says the pamphlet (printed) now shown him, was issued by Mr. Fisk, the President of said Company, by direction of the Board of Directors of said Company; said pamphlet purports to be the report of the Board of Directors of said Company to the stockholders, bearing date the 15th June, 1843, and signed by George B. Fisk, President of the Board; said pamphlet is now offered in evidence; defendants object to it, on the ground that

it is but a copy; it is admitted, subject to objection, and is marked Exhibit Z; witness says he kept the books of said Company.

Cross-examined by defendants. Q. Is this the original report of the Board of Directors of said Company? A. I think it is the original report of said Company of 15th of June, 1843. Q. This paper is in print, the original was in writing, was it not? A. Yes, sir.

Direct examination resumed. Q. The statement of figures at pages 2 and 3, do they correspond with the books of the Company? (Question objected to, and plaintiff waives the question.)

DAVID S. IVES.

Sworn this 15th June, 1855, before me,

ABM. UNDERHILL,
Referee.

Adjourned to 20th June, at 3½ o'clock P.M.

June 20th, 1855.—All parties appear as before.

Plaintiff now puts in evidence a judgment recovered by Abraham Richards and David Selden, against the Morris Canal and Banking Company, dated 28th December, 1841, for $16,727$\frac{86}{100}$ dollars, docketed in Hudson County. It is marked Exhibit No. 1.

Also a judgment between the same parties, recovered 7th September, 1841, in the Supreme Court of the State of New Jersey, for $38,631 30 of debt, and $898 19 damages and cost. It is marked Exhibit No. 2.

Also a judgment recovered 7th September, 1841, by Henry Yates, Thomas G. Talmage, William Curtis Noyes, against the Morris Canal and Banking Company, in the Supreme Court of the State of New Jersey, for $10,000 of debt, and $1245 19 damages and costs. It is marked Exhibit No. 3.

Also a judgment recovered by William S. Nicols against the Morris Canal and Banking Company, in the Supreme Court of the State of New Jersey, on 12th November, 1841, for $543 84 damages and costs. It is marked Exhibit No. 4.

These four several judgments are received in evidence, subject to all objections to their admissibility or relevancy as evidence; the sufficiency of their authentification is admitted.

Plaintiff also puts in transcript of a judgment recovered in the Supreme Court of the State of New York, by Abraham Richards and David Selden, *against* the Morris Canal and Banking Company, May 12th, 1841, $38,364 65 debt, $266 64 damages and costs. It is marked Exhibit No. 5.

Also a transcript of another judgment between the same parties in same court, recovered April 1st, 1842, for $56,964 27 debt, and $995 46 damages and costs. It is marked Exhibit No. 6.

It is consented that these transcripts be received in evidence with

the same effect as the judgment records, subject to all objections as to the admissibility or relevancy of said judgment records.

The plaintiff's counsel now produces the original agreement between the Morris Canal and Banking Company and the State of Michigan, dated 9th December, 1840, of which a copy is annexed to the bill of complaint herein, and offered and put in evidence, the indorsement thereon being a certificate of William H. Bunn, Deputy Register, of its record in the office of Register of the City and County of New York, in Lib. 242 of Mortgages, page 600, December 21st, 1840.

Adjourned to 13th July, 1855, at 3½ o'clock P.M. (Friday.)

July 13th, 1855.—All parties met and appeared as before, pursuant to adjournment, and consented to adjourn over to September 17th, 1855, at 3½ o'clock, P.M.

September 17th, 1855.—All parties met and appeared as before, pursuant to adjournment, and adjourned to September 24th, 1855, at 3½ o'clock.

September 24th, 1855.—All parties met. H. Selden, Ex., &c., appeared by A. L. Jordan; the other parties appeared as before.

Thomas W. James, sworn for plaintiff by me, says: That in March, 1840, he was a notary public in the State of New Jersey, and had been for two or three years before that, and has been from that time until now; witness resided in Jersey City, in the county of Bergen, until April, 1840, when it was changed to Hudson County, by dividing Bergen County. Ques. Had you in your hands, in March, 1840, any bond of the Morris Canal and Banking Company, and if so, what did you do with it? Ans. I can only answer that question by referring to my notarial book of records; the whole transaction has escaped my recollection. Ques. When was the record made? Ans. It is dated the 31st of March, 1840; it was made on that day or the day after; this is my record now before me. (The record referred to by witness is now offered and put in evidence by plaintiff; it is marked Exhibit No. 7;) this evidence is objected to in time, as inadmissible; it is taken, subject to objection. It is agreed that a copy of this record, certified by the witness, shall be marked and filed as Exhibit No. 7. (Witness is shown a paper, and says the signature thereto is the signature of the witness.) I have read this paper through, and facts therein stated are true according to witness's record of the transaction. This paper is marked Exhibit No. 8. Witness says he has no recollection of the facts there stated, aside from the record.

THOS. W. JAMES.

Sworn this 24th September, 1855, before me,

ABM. UNDERHILL,
Referee.

Adjourned to September 27th, at 3½ o'clock.

September 27th, 1855.—Parties all appeared as before, and adjourned to October 4th, 1855, at 3 P.M.

October 4th, 1855.—All parties appear as before, except defendant, Henry Shelden, Ex., &c., who did not appear. Plaintiff's counsel presents an affidavit of Asa Whitehead, a witness previously examined, which is marked now Exhibit No. 9, together with the papers therein referred to, six in number, now marked 9 a, 9 b, 9 c, 9 d, 9 e, 9 f. The parties appearing to-day consent that this affidavit of Mr. Whitehead may be received with same effect as if he had appeared and testified orally before the referee, subject to all objections to the admissibility of the evidence; Exhibit 9 f having been already put in as Exhibit No. 8.

Adjourned to October 15th, at 3½.

October 15th, 1855.—All the parties appeared as at the first meeting.

Mr. Jordan now consents that the affidavit of Mr. Whitehead, marked Exhibit No. 9, may be received in evidence, upon same terms as consented to by the other parties at the last meeting.

The plaintiff offers in evidence the affidavit of William H. Pinckney, and the affidavit of Charles S. Hunt, also the affidavit of Charles W. Butler, and the certificate of Rodney R. Gibson, Deputy Secretary of State of the State of Michigan, which together are marked Exhibit No. 10, and they are admitted with the same effect as if their contents were sworn to by the deponents, and parties certifying respectively, subject to all objection to the admissibility of the evidence.

Plaintiff now offers in evidence an act of the State of Michigan, entitled "An Act to provide for the collection of certain assets transferred to the State, and for other purposes," approved February 17th, 1842, which is marked Exhibit No. 11; also an act of the State of New Jersey, entitled "An Act to prevent frauds by incorporated companies," which is marked Exhibit No. 12, passed February 16th, 1829; and also offers in evidence the acts of the State of New Jersey, of which copies are annexed to the bill of complaint, and the same are all received, subject to all legal objections.

Adjourned to Thursday, the 25th October, 1855, at 3½ o'clock.

October 25th, 1855.—Met. Parties appeared as before, and adjourned to November 1st, 1855, at 3½ o'clock.

November 1st, 1855.—Met. Parties appeared as before, and adjourned to November 9th, 3½ o'clock.

November 9th, 1855.—Parties appear as before.

Edward R. Biddle sworn for defence for all the defendants.

The witness resides in the city of New York, as he says, and is

upwards of forty years of age, and is by profession a banker. Q. Was you, on the 9th day of December, 1840, and before and after that date, one of the officers of the Morris Canal and Banking Company, and if so, what office did you hold? A. I became Vice-President of that Company in May, 1837, I think it was, and afterwards became President of it, on the resignation of Samuel L. Southard, and remained such President until about the winter or spring of 1841; I must have been President of the Company on the 9th of December, 1849. Q. Do you remember a negotiation between the said Company and the State of Michigan in December, 1840, or at any other time, and was there an agreement made between those parties on or about the 9th day of December, 1840, marked Exhibit E in this cause, and was that agreement in writing, and signed by you as President? A. I recollect an agreement between those parties executed by the executive officers of the Company on or about that time. The witness refers to Exhibit E, and says, this, I believe, is a copy of the said agreement. Q. Was that agreement made by the authority or with the consent and approbation of the Directors of the Morris Canal and Banking Company, or of the Executive Committee of that Company, having authority for that purpose? (Objected to by plaintiff, on the ground that the resolutions and minutes of the Board of Directors are the only evidence of the authority and action of the Company.) Question taken, subject to objection. A. My impression is, that it was either done by authority of the Board of Directors, or by the authority of a committee,—whether it was the Executive or some other committee, I cannot say; my impression is there was a special committee for that purpose, but that is merely an impression. Q. Did the committee of said Company usually keep minutes of their proceedings? (Objected to.) A. My impression is, that those committees were very lax in keeping minutes of their proceedings; some of the committees did, I think. Q. Was the agreement of the 9th December, 1840, Exhibit E, to which you have referred, carried into effect by delivering the various items of property therein mentioned? A. I believe it was. Q. What do you know about the directors of said Company having a knowledge of the settlement and agreement with the State of Michigan, to which you have referred, and what do you know about their having acquiesced in it, if they had any such knowledge? (Question objected to as leading, and also that minutes are the evidence, &c.) A. I believe the directors had eventually a general knowledge (perhaps they did not at the moment) of the purport of the said agreement with the State of Michigan; the usual course would be for a committee to report, and for the board to confirm; and I have no further knowledge or recollection beyond what was the usual course of proceeding. Q. Did any of the directors, to your knowledge or recollection, object to the said agreement? A. I have no recollection at the present time how the vote may have stood when the com-

mittee may have reported. Q. When that agreement was made, where did the said Company keep their office and transact business, and where was the agreement executed? A. The said Company had an agency in New York, but I think they had discontinued it before the execution of said agreement; I believe all their documents of any importance were executed at Jersey City. Q. Was the said Company solvent or insolvent when that agreement was executed? A. That is a matter of opinion; in the spring of 1837, in the month of May or June, I think, I took charge of the Company,—Mr. Samuel L. Southard being President, and I Vice-President; the Company had then been extensively dealing, anterior to our coming in, when Mr. McLane was President, in foreign bills of exchange, buying for cash and selling on time, and had accumulated a very large amount of notes or bills receivable, which at that time were considered good by very many members of the Board of Directors, which afterwards proved to be worthless or unavailable; in the month of June, 1837, I think it was, £80,000 sterling of the said Company's bills drawn on London were returned protested; the large creditors of the said Company were generally consulted as to the expediency of sustaining the credit of the Company, and under advisement of some of the large creditors, it was believed that the Company would sustain its credit by endeavoring to collect in bills receivable, and obtaining extension or renewals of their indebtedness to the State of Indiana and other creditors, and subsequently a large portion of their bills receivable proved to be worthless; and each renewal of their credits on State stocks and Michigan State stocks subsequently purchased on a credit, with the assistance of the Bank of the United States, resulted in great losses, and the ultimate failure of the Company in, I think, the year 1841; I think their paper was protested a long time before that period, protested and sometimes renewed, and sometimes the Company made compromises and settlements of the debts.

Cross-examined: Did the Morris Canal and Banking Company ever pay the debts that it owed in June, 1837; or did some, and if so, what portion of those debts remain at the time of what you have called the ultimate insolvency of the Company? A. If the mortgage debt of said Company is considered a part of its debts, which I presume it must be, a very large amount of its debts remained unpaid on the final insolvency. Q. What was the proceeding or condition of the Company, which you designate as its ultimate insolvency; was it a proceeding in Chancery to wind it up? A. I don't recollect; I retired from the presidency in the winter or spring of 1841, I think, and Edwin Lord became president. Q. Was the Company, on the 9th December, 1840, able to pay its debts? A. I should think not; it would depend upon the value of the canal, which only sold for about one-quarter its cost subsequently. Q. Was the Company at any time between June, 1837, and December 9th, 1840, able to pay its debts? A. Subsequent events proved it was not, as a large

proportion of its bills receivable proved to be worthless, and the canal sold for about one-quarter its cost. Q. What loss did the Company suffer in assets or property between the 9th December, 1840, and what you designate its ultimate insolvency? A. I have no idea, and can express no opinion. Q. Had not its losses, and the depreciation of its property, wholly or mainly occurred at or prior to 9th December, 1840? A. Not wholly, but mainly. Q. What percentage upon the debts of the Company, at the time of its ultimate insolvency, was ever paid from its assets? (Objected to.) A. I have no idea; a very small percentage. Q. Were not those debts upon which a small percentage was thus paid, all or most of them those that occurred prior to the 9th December, 1840? A. The largest debt that was paid was that to the Dutch, who had a mortgage upon the canal, and was paid by a foreclosure of the mortgage; that debt was prior to 9th December, 1840; the principal part of the debt on which such percentage was paid, occurred prior to December, 1840; on some of these debts, large percentages were paid, being cases where parties held specific securities, and I presume they were paid out of such security. Being shown Exhibit T., the witness says that this was addressed to and received by me at or about the date of the indorsement, October 9th, 1840, which indorsement is in my handwriting. Q. Was the claim in said Exhibit T. stated, ever paid by the said Company? A. I don't recollect how the final settlement with the Bank of the United States was made; my impression is, that the bank finally lost by the said Company; I recollect nothing specific about this debt; it was not paid by the said Company; I think that debt was purchased or paid by other parties. Q. In regard to the transaction of the said Morris Canal and Banking Company with the State of Michigan, and the agreement of December 9, 1840, in respect to any action or acquiescence of any director or directors of said Company therein, have you any other knowledge or recollection than such as rests upon the general course of business of the Company? (Question objected by the defendant as vague and indefinite.) A. I have none other, sir. Q. Did you see Robert Stuart, Treasurer of the State of Michigan, at or about the time of the agreement of December 9th, 1840? A. I did; he was the person who negotiated it on behalf of the State of Michigan with said Company. Q. Did you see and peruse a copy of the Bill in Chancery, in the State of New Jersey, exhibited by the State of Michigan against said Company, at or before the time of the agreement of December 9th, 1840? A. I presume I saw it; I don't recollect the time; it was before the settlement was made.

E. R. BIDDLE.

Sworn this 9th Nov., 1855, before me,

ABM. UNDERHILL,
Referee.

George Griswold, sworn for defendants: Witness says: I reside in the city of New York; am upwards of forty years of age, and am by profession a merchant. Q. What do you remember in respect to a sale of a bond and mortgage made by the Long Island Railroad Company to Abm. G. Thompson, at the Merchants' Exchange or elsewhere, in or about May, 1843? A. I can't recollect the date, I recollect the sale at the Exchange; it was sold at auction under the direction of Mr. Hammond, who represented the State of Michigan; I don't remember the price it sold at; it was bought by Abm. G. Thompson. Q. Were you jointly interested with Mr. Thompson in that purchase, and did you pay a part of the consideration money? (Question objected to by plaintiff.) A. I agreed to receive a part of the bond and mortgage, for which I paid Mr. Thompson; subsequently I agreed to give up my interest, to him, and relinquish it back to him. Question repeated. I was either interested at the time of the purchase, or became interested the same day, immediately after the sale; I am not sure, but I agreed beforehand to take an interest if he got it at a certain price; it was done at the Exchange, at the time of the sale. Q. Had you any notice or information that the Morris Canal and Banking Company were insolvent at the time they passed over their claims against the Long Island Railroad Company to the State of Michigan; or do you know that Mr. Thompson had any such notice or information? A. I had no such notice or information. I certainly should not have bought it if I had; I supposed they had a good right to sell; nor do I think Mr. Thompson had; we talked it over before we went to the sale; I don't know that Mr. Thompson had any such notice or information; I do not believe he had any such notice or information, for if we had we should not have purchased; I have no doubt I agreed with Mr. Thompson to take an interest before the sale, if it went at a certain price. Q. Did you take such interest at the sale or afterwards; and were you a joint owner with Mr. Thompson of the bond and mortgage? A. I took the interest at the sale, and was a joint owner with Mr. Thompson before we left the Exchange. Q. Had you, or had Mr. Thompson, to your knowledge, any notice or information as to what the laws of New Jersey were in respect to the alienation of property of insolvent moneyed corporations, at the time of such sale? A. I had no knowledge of such laws, nor of the proceedings about it; nor do I know or believe that he had any, or he would have explained it to me when we discussed it over. Q. Has Mr. Hoyt, the plaintiff, at any time as assignee of the Morris Canal and Banking Company, preferred claims against you, arising out of your transactions with that Company; and if so, have the same been settled and discharged? (Objected to by plaintiff.) A. He did institute a suit against me in relation to those matters, as assignee of the receivers, and it was settled. Q. Have you got his discharge, and will you produce it? (Objected to.) A. I have got his discharge; this

if he is a subscribing witness thereto. A. I am; the words "in the presence of Henry E. Davies," are in my handwriting. Q. Where was that instrument executed? A. I think in our office, No. 56 Wall Street, in the city of New York. Mr. Stuart I am sure was. Q. Did you ever witness any such instrument as that in the State of New Jersey? A. I have no recollection of it; I think I did not. Q. Do you know the handwriting of the body of that instrument? A. I do not; it is the handwriting of some scrivener that is familiar to me, but I cannot tell now who; the indorsement is in my handwriting. Q. Do you know by whom the draft of that instrument was prepared? A. I think it was prepared by Judge Foot, my then partner in our office. The witness says the signatures to the instrument are in the same ink as the body of the instrument, as is also the indorsement on the instrument. Witness says he knows the handwriting of Joseph Strong, and that both the certificates of acknowledgment and of proof are in the handwriting of said Joseph Strong, who was at the time a Commissioner of Deeds of the State of New York, residing in the city of New York.

Cross-examined. Q. To what signature or seal did you become a witness to said instrument? A. I see by the proof of acknowledgment that I must have witnessed the signature of Mr. Stuart, and my impression is that I witnessed the signatures of Mr. Biddle and Mr. Gibson, as I remember of their being at the office in connection with this subject; the seal of the Company was not impressed on the instrument at our office, nor in my presence. Q. Do you think that your signature as witness is in the same ink as that in which the body of the instrument is written? A. I should think from the appearance that they were; I have no other means of knowing. Q. In whose handwriting is the receipt signed by Mr. Foot on the said instrument? (Ques. objected to, because there is no receipt there signed by Mr. Foot.) A. The whole receipt, including the signature, is in the handwriting of a clerk in our office; the word "copy" is in Mr. Foot's handwriting.

Direct again.—Q. Does the receipt just referred to, purport to be a receipt, or a copy of a receipt? A. It purports to be a copy of a receipt. Q. Was the seal of said Company on said instrument when you witnessed it? A. My impression is that it was.

HENRY E. DAVIES.

Sworn this 5th day of December, 1855, before me,

ABM. UNDERHILL,
Referee.

Defendants put in evidence the entry in the book of minutes of the Morris Canal and Banking Company, heretofore produced in evidence, labelled on back 226 D, at page 313 and 314, the proceedings

of a meeting of the 31st December, 1840. The parties consent that a copy, to be certified by the Referee, shall be received as an exhibit, in lieu of the original, of the proceedings of this meeting.

Defendants also put in evidence from said book of minutes, on page 312, the proceedings of a meeting of the Directors of the Morris Canal and Banking Company, of the 5th of November, 1840. A like consent also is made that a copy of this last entry, certified by the Referee, shall be received as an exhibit, in lieu of the original, of the proceedings of this meeting.

Adjourned to Thursday, Dec. 13th, at 3½ P. M.

It is admitted that the office of the Morris Canal and Banking Company at Jersey City was open for the transaction of ordinary business until the 24th day of Sept., in the year 1841, the executive officers of said Company being in attendance during business hours, and said office being accessible for the purpose of business during that period, and that said Company purported and assumed to continue and act as a corporation until that time, viz., September 24th, 1841.

But this admission shall not be deemed to extend so far as to admit that any of the debts of said Company in existence before December 9, 1840, were paid, or any of its embarrassments prior to that period, were relieved during such subsequent period of its existence, or as to admit that the banking business of said Company was carried on, or attempted to be carried on, by said Company subsequent to said 9th day of December, 1840, or as in anywise to affect those questions one way or the other.

The plaintiff's counsel stipulates and agrees that the following statements, and the affidavit of William A. S. Russell, thereto annexed, be admitted in evidence in this action, with the same effect as if said Russell had been sworn as a witness herein before the Referee, and had testified to the several facts embraced in said statements and affidavit.

Statement No. 1.

Bonds Due in May, 1847.

No.	Amount.	When Paid.	
1	1,000	May 1, 1847.	
2	1,000	May 1, 1847.	Coupons paid the
3	1,000	May 1, 1847.	same day, $140 00.
4	1,000	May 1, 1847.	
5	1,000	May 8, 1847.	
6	1,000	May 8, 1847.	
7	1,000	May 8, 1847,	Coupons paid same
8	1,000	May 8, 1847.	day, $210 00.
9	1,000	May 8, 1847.	
10	1,000	May 8, 1847.	

Bonds Due in May, 1848,

No.	Amount.	When Paid.	
11	1,000	May 4, 1848.	Coupons paid same, $35 00.
12	1,000	May 4, 1848.	Coupons paid same, $35 00.
13	1,000	May 4, 1848.	Coupons paid same, $35 00.
14	1,000	May 9, 1848.	Coupons paid, $70 00.
15	1,000	May 9, 1848.	
16	1,000	May 2, 1848.	Interest paid May 9th, on 16 coupons, $560 00.
17	1,000	May 2, 1848.	
18	1,000	May 2, 1848.	
19	1,000	May 2, 1738.	
20	1,000	May 2, 1848.	

Statement No. 2.

No.	Amount.	
1	228 88	
2	228 88	
3	228 88	
4	228 88	
11	228 88	Oct. 20th, 1846.
12	228 88	
13	228 88	
14	228 88	
15	228 88	
21	228 88	
22	228 88	
23	228 88	
24	228 88	
25	228 88	June 26th, 1847.
31	228 88	
32	228 88	
33	228 88	
34	228 88	

The above were dated May 1, 1843, and due May 1, 1850. There are 22 of these bonds still unpaid, amounting to $5035 36.

Superior Court.

JESSE HOYT
v.
HENRY SHELDEN and others.

City and County of New York, ss.

William S. S. Russell, being duly sworn, says: That he is the Sec-

retary and Treasurer of the Long Island Railroad Company, one of the defendants in this action; that the foregoing are true transcripts from the books of the said Company, showing the times at which the several bonds stated in the Company's answer herein to have been given to Abraham G. Thompson, were paid.

That the first above statement refers to the bonds given for the principal debt due from said Company to the Morris Canal and Banking Company; and the second statement to the bonds given for the interest in arrear at the time on said bonds, and that deponent believes the annexed statements to be in every respect true.

And the deponent further says: That all the said bonds were payable by their terms to A. G. Thompson, or bearer, and were, together with said coupons, paid on the presentation thereof at the office of said Company.

(Signed)

WM. S. S. RUSSELL.

Sworn to before me, this 22d day of December, 1855.

N. C. EVERETT,
Commr. of Deeds.

February 28, 1856.—Met, and the commission to Chicago returned to me by mail, was, in presence of the counsel of the respective parties, opened, and the testimony read as follows:

The People of the State of New York, to Robert W. Strong:

Know ye, that we, with full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize you to examine Charles G. Hammond, as witness in a cause pending in the Superior Court of the City of New York, in which Jesse Hoyt is plaintiff, and Henry Shelden, executor, &c., of Abraham G. Thompson, deceased, and others, are defendants, on the part of the plaintiffs on oath, upon the interrogatories annexed to this commission, and to take and certify the depositions of the witness, and return the same according to the directions hereunto annexed.

Witness, Thomas J. Oakley, Esquire, Chief Justice of said Court, at the City Hall, in the City of New York, the 15th day of November, one thousand eight hundred and fifty-five.

GEO. T. MAXWELL.

S. SANXAY,
Plff's Atty.,
19 William Street,
New York.

Directions for executing the Commission.

The persons to whom such commissions shall be directed, or any one of them, unless otherwise expressly directed therein, shall execute the same as follows:

1. They, or any one of them, shall publicly administer an oath to the witness named in the commission, that the answer given by such witness to the interrogatories proposed to them, shall be the truth, the whole truth, and nothing but the truth.

2. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.

3. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall in like manner be subscribed by the witness proving the same, and shall be certified by the commissioners.

4. The commissioners shall subscribe their names to each sheet of the depositions taken by them; they shall annex all the depositions and exhibits to the commission, upon which their return shall be indorsed; and they shall close them up under their seals, and shall address the same, when so closed, to the clerk of the court from which the commission issued, or to the clerk of the county in which the venue shall be laid, as shall have been directed on the commission, at his place of residence.

5. If there is a direction on the commission to return the same by mail, they shall immediately deposit the packet, so directed, in the nearest post-office.

6. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet, so directed, shall be delivered to such agent.

The above is an extract from the Revised Statutes of the State of New York, vol. 2, page 394, relating to the taking of testimony out of the State.

This commission, when executed, is to be returned to George T. Maxwell, Esquire, Clerk of the Superior Court of the City of New York, at the City Hall, in the city of New York, by mail.

The execution of this commission appears in certain schedules hereunto annexed.

R. W. STRONG,
Commissioner.

Interrogatories to be administered to Charles G. Hammond, a witness to be produced and examined under the annexed commission, before the commissioners named therein, as a witness in a certain suit pending in the Superior Court of the City of New York, in which Jesse Hoyt is plaintiff, and Henry Shelden, executor, &c., of Abraham G. Thompson, and others, are defendants, on the part and in behalf of the plaintiff.

First. What is your name, age, occupation, and where do you reside now, and where did you reside in the month of May, 1843? Did you at that time hold any public office or trust of, or from the State of Michigan? If so, what office or trust, and for what period?

Second. Did you know, in the year 1843, John J. Adams, and Robert P. Eldridge, or either of them, and which? Did either or both of them hold in that year, any public office or trust of or from the State of Michigan? If so, what office or trust respectively, and for what period?

Third. Did you, in the year 1843, in your official relation to the State of Michigan or otherwise, have to do with, or have any knowledge of, the debt and its securities, or any or either of them, of the Long Island Railroad Company to the Morris Canal and Banking Company, mentioned and included in an instrument of agreement of the 9th of December, 1840, purporting to be executed between the State of Michigan and the Morris Canal and Banking Company? Did you treat for or negotiate any sale or transfer of such debt or securities, or any or either of them? If so, in whose behalf, and who was the other party to such treaty or negotiation?

Fourth. Did you, in the year 1843, or at any and what time, know Abraham G. Thompson, of the city of New York? Did you have any dealing, treaty or negotiation with him, of or concerning the debt and securities in the last interrogatory mentioned, or any or either of them? If so, what were such dealings, treaty and negotiations, and what was the result of the same? When were they carried on, and did said Thompson personally, or by any agent, friend, or attorney, or in both manners, conduct on his part such dealings, treaties or negotiations?

Fifth. Was any sale made of said debt and its securities, or any or either of them, by said State of Michigan? Was it by auction or otherwise? To whom was such sale made, and for what sum or price? Was any assignment or conveyance of said debt and securities so sold made to the purchaser, or to any person or persons, in pursuance of such sale? and if such sale was at auction, where was it, and what was the object of it, and did said Thompson attend said sale in person, or by any representative?

Sixth. To whom was such assignment or conveyance (if made) delivered? Did you retain or have you in your possession any copy of the same? If so, annex a copy of it to your deposition; if not, look at the paper annexed to these interrogatories, marked Schedule A., and say if it be a copy of such assignment or conveyance.

Seventh. Did you know whether the said Abraham G. Thompson knew of, or by himself or any agent, counsel or attorney, examined the instrument or agreement of 9th December, 1840, mentioned in the third interrogatory? If you shall say he did so by any agent, counsel or attorney, who was such counsel, agent or attorney? and if you say that said Thompson did so know, state what are your means of knowledge of that fact.

Eighth. If you shall say that the sale of said debt and its securities was by auction, was there any, and if so, what, bargain, agreement, or understanding by or between the State of Michigan, or any per-

son acting in its behalf, and Abraham G. Thompson, or any one in his behalf, as to the price the same must bring at any time, in the price said Thompson was to pay for the same, or the price the State of Michigan would allow the same to be sold for, at such auction? If so, state the particulars of such bargain, agreement or understanding.

Ninth. Did you know whether said Abraham G. Thompson, before taking the assignment or conveyance of said debt or its securities, or any of them, from the State of Michigan, knew, or by any agent or attorney examined the title of the State of Michigan to said debt and securities, or any of them, or the papers, documents, or instruments through which such title was made to said State; and if so, what were your means of such knowledge? Did said Thompson, before taking such assignment, to your knowledge, know of the insolvency of the Morris Canal and Banking Company at and before the date and execution of the said instrument or agreement of December 9, 1840, inquired of in the third interrogatory; and if you say he did know, state your means of knowledge.

Tenth. Did, in such sale or negotiations, the State of Michigan warrant or guarantee the title of the State of Michigan to said debt and securities so sold, or the solvency of the Morris Canal and Banking Company, at the time of the supposed transfer of said debt and securities from it to the State of Michigan? Was anything said about such guaranty or warranty? Did the State of Michigan refuse to make such warranty or guaranty? If so, to whom, and at what stage of the sale in negotiations?

Lastly. Do you know any other fact or circumstance to the advantage of the plaintiff in this action? If so, state the same as particularly as if you were thereto specially interrogated.

S. SANXAY,
Attorney for Plaintiff.

The above interrogatories are allowed, subject to all legal exception or objection to be made at trial.

November 3, 1855.

T. H. RODMAN,
Of Counsel for Defendants.
S. SANXAY,
Of Counsel for Plaintiff.

Allowed.

JOHN SLOSSON, *Justice.*

Cross-interrogatories to be administered to Charles G. Hammond, a witness to be produced, sworn, and examined, on behalf of Jesse Hoyt, in a suit pending in the Superior Court of the City of New York, in which the said Jesse Hoyt is plaintiff, and Henry Shelden, executor of Abraham G. Thompson, deceased, and others, are defendants.

First. If, in answer to the third interrogatory, you say that you treated for or negotiated the sale or transfer of debt of the Long Island Railroad Company to the Morris Canal and Banking Company, or the securities held for such debt, with Abraham G. Thompson, did you treat or negotiate verbally or in writing, and if in writing, by what writing, and where is it? In what place particularly was such treaty or negotiation carried on, and who was present at such time?

Second. If you say there was a sale of said debt and its securities, and that there was a bargain, agreement, or understanding about it, between the State of Michigan and Abraham G. Thompson, prior to such sale, state whether the said bargain, understanding, or agreement, was in writing, and if so, where is the writing, and by whom was it executed or signed, on behalf of the State of Michigan and of said Abraham G. Thompson? If it was verbal, how do you remember its terms? Did you keep any minute or memorandum of it, and where was it made, and between what parties?

Third. Did not said Thompson, prior to said sale, apply to you as the representative of the State of Michigan, and offer to buy said debt and the securities therefor, and did you not refuse to sell the same to him at private sale, and inform him that the same would be sold at auction?

Fourth. When and where did said auction take place, what notice thereof was given, and for how long a time prior to the sale? If said sale was advertised in the newspapers, in how many and what papers, and by what auctioneer was it made, and under whose directions, or under what authority was it advertised?

Fifth. If you were present at said sale, who else was present, and how large a company attended said sale?

Sixth. Did you then know George Griswold and George B. Fisk? Was either or both of them present at said sale?

Seventh. If you can say you were present at the auction sale above mentioned, state the price which said debt and its securities brought, and who was the highest bidder, and in whose name was the same struck down, and what were the terms of sale.

Eighth. If you say the highest bid was $20,000, and was offered by Abraham G. Thompson, how, and when, and by whom, was the money paid, and to whom? If you say it was paid to you, was it paid by said Thompson and George Griswold, or by both of them, and if so, what amount was paid by each, and if all paid by said

Thompson, was any and what part received by him from the said George Griswold, or any other person?

Ninth. If you say part of the purchase-money was paid by George Griswold, how, when, and where was it paid, and do you know what interest he had in the purchase in connection with said Thompson, and whether such interest accrued before or subsequent to the sale? State what you know respecting the same.

Tenth. Were you present when said Thompson received from the State of Michigan its assignment, in writing, of said debt and its securities? How long after the sale was it received, and from whom, and where particularly was it delivered to said Thompson?

Eleventh. If you say that the whole of the purchase-money was not paid at the sale, what part was paid afterwards, when, where, and to whom, was such part subsequently paid, and by whom, and if by more than one person, what sums by each? And state if any part of such subsequent payment was paid by or for account of said George Griswold; state particularly the dates, names, place, and amounts.

Twelfth. If you say that Abraham G. Thompson, prior to said sale, examined the agreement of the 9th December, 1840, by his counsel, agent, or attorney, how do you know that the person pretending to act on behalf of said Thompson was such agent, attorney, or counsel, and what was his name?

Thirteenth. If you say said Thompson, prior to said sale, or prior to the assignment or transfer of said debt or its securities to him, knew, or by his agent or attorney examined the title of the State of Michigan to said debt or securities, or the papers, documents, or instruments relating thereto, how do you know he did, and where was it examined, and who was present at the time, and what papers were examined in your presence or within your personal knowledge?

Fourteenth. If you say said Thompson, prior to said sale, knew of the insolvency of the Morris Canal and Banking Company, how do you know that he did?

Fifteenth. If you say the State of Michigan warranted or guaranteed its title to said debt or securities, how do you know it did so, how did it do so, in what manner and by what person, and where was it done, and by what authority was it done, and who was present at the time?

Sixteenth. If the State refused to warrant or guarantee its title, who refused on behalf of the State, and to whom was the refusal communicated, and when and where did it take place?

MANN & RODMAN,
Attorneys for Executors of George B. Fisk.

CHARLES S. JORDAN,
Attorney for Executors of Abraham G. Thompson.

WEEKS & DE FOREST,
Attorneys for Long Island Railroad Company.

The above cross-interrogatories are allowed, subject to all objections or exceptions to be made at the trial.

November 3d, 1855.

T. H. RODMAN,
Of Counsel for all the Defendants.
S. SANXAY,
For Plaintiff.

Allowed.—JNO. SLOSSON, *Justice.*

New York Superior Court.

JESSE HOYT
v.
HENRY SHELDEN, Executor, &c.

(Schedule A. referred to in the sixth interrogatory.)

Know all men by these presents, that the State of Michigan, party hereto of the first part, in consideration of the sum of $20,000, lawful money of the United States, to the said State of Michigan in hand paid by Abraham G. Thompson, of the City and State of New York, of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part, a certain indenture of mortgage, bearing date the tenth day of March, one thousand eight hundred and forty-one, made by the Long Island Railroad Company as the party thereto of the first part, to the Morris Canal and Banking Company, upon the real estate of the said The Long Island Railroad Company, to secure the principal sum of $40,000, and recorded in the office of the Clerk of Kings County, in Lib. 68 of Mortgages, page 417, 28th April, 1841, in the office of the Clerk of the County of Queens, in Lib. M. M. of Mortgages, page 205, on the 10th of May, 1841, and in the office of the Clerk of the County of Suffolk, in Lib. 27 of Mortgages, at page 143, on the 11th June, 1841, together with the bond or obligation therein described, and the money due or to grow due thereon, with the interest, which bond and mortgage were assigned by the said The Morris Canal and Banking Company to the said State of Michigan, by an instrument of assignment, bearing date the 26th day of April, in the year 1841, and recorded in each of the three clerks' offices hereinbefore stated. To have and to hold the same unto the said party of the second part, his executors, administrators, and assigns forever, subject only to the proviso in the said indenture of mortgage mentioned. And the said State of Michigan do hereby constitute and appoint the said party of the second part their true and lawful attorney, irrevocable in their name, or otherwise, but at his proper costs and charges to have, use, and take all lawful ways and means for the recovery of the said

money and interest; and in case of payment, to discharge the same as fully as they might or could do if these presents were not made. And the said State of Michigan do hereby covenant, promise, and agree to and with the said party of the second part, that all the principal sum secured by the said bond and mortgage is still due and unpaid.

In witness whereof, the said State of Michigan has to these presents caused the great seal of State to be affixed, and these presents to be signed by Charles G. Hammond, Auditor-General, John J. Adams, Treasurer, and Robert P. Eldridge, Secretary of the said State, the 30th of May, in the year 1843.

(Signed), CHARLES G. HAMMOND,
Auditor-General.

[L. S.] JOHN J. ADAMS,
State Treasurer.

R. P. ELDRIDGE,
Secretary of State of the State of Michigan.

Signed and delivered in the presence of
C. C. JACKSON,
T. T. BRODHEAD.

"Schedule A." referred to in the interrogatories and depositions hereto annexed.

C. G. HAMMOND.

On the back of said Schedule A. is the following:

At the execution of a commission for the examination of witnesses between Jesse Hoyt, plaintiff, and Henry Shelden, Executor of Abraham G. Thompson and others, defendants, this paper writing was produced and shown to Charles G. Hammond, and by him deposed unto at the time of examination before

R. W. STRONG,
Commissioner.

Depositions of Charles G. Hammond, a witness produced, sworn and examined, the twelfth of January, in the year one thousand eight hundred and fifty-six, at Chicago, in the county of Cook, and State of Illinois, under and by virtue of a commission issued out of the Superior Court of the City of New York, in a certain cause therein pending and at issue between Jesse Hoyt, plaintiff, and Henry Shelden, executor of Abraham G. Thompson, deceased, and others, defendants, as follows:

Charles G. Hammond, of the city of Chicago, Superintendent of the Chicago and Burlington Railroad Company, aged fifty years and upwards, being duly and publicly sworn, pursuant to the directions

hereto annexed, on the part of the plaintiff, doth depose and say as follows:

First. To the first interrogatory he saith: My name is Charles G. Hammond; am fifty years of age and upwards; and I now reside in the city of Chicago; I resided in Detroit, in the State of Michigan, in May, 1843; I held a public office in trust from the State of Michigan; was Auditor-General of that State from the 1st of April, 1842, to the 1st of June, 1845, or thereabouts.

Second. To the second interrogatory he saith: I knew both John J. Adam (not Adams) and Robert P. Eldridge in 1853; they both held public offices from the State of Michigan; Robert P. Eldridge was Secretary of State for four years, commencing in 1842; and John J. Adam was State Treasurer for about the same period.

Third. To the third interrogatory he saith: In my official relation to the State of Michigan, I had to do with and had a knowledge of the debt and its securities of the Long Island Railroad Company to the Morris Canal and Banking Company, mentioned in the agreement referred to in this interrogatory; I treated for and sold the "Long Island Mortgage," so called, in behalf of the State of Michigan, and it was sold at auction.

Fourth. To the fourth interrogatory he saith: I knew Abraham G. Thompson, of the city of New York, in 1843; I had dealings with him in regard to the debt mentioned in my last answer; I applied to him to purchase it, but stated to him that it must be sold at auction, and the result was that it was sold at auction; and he came in and took off the bid, it having been bid off by Charles Butler; I saw him at his own office in New York City; I also saw him at the office of Mr. Strong, his lawyer, in that city, who gave him his legal advice on the subject; Mr. Griswold acted with me on behalf of the State of Michigan.

Fifth. To the fifth interrogatory, he saith: The debt was sold at auction: it was bid off by Charles Butler for twenty thousand dollars at my request; Mr. Thompson notified me through Mr. Griswold that he would take the bid, and would pay the money upon the receipt of the proper transfer or assignment, which I consented to upon receiving three thousand dollars in hand; there was an assignment of said debt made to said Abraham G. Thompson, by the proper officers of the State of Michigan; the State of Michigan held it as collateral security to the debt of the Morris Canal and Banking Company, upon whose default it had a right to sell; but the deed of trust obliged it to be sold at public auction, or at least it was considered prudent to sell it in that manner; the object was to raise money for the wants of the State; Mr. Thompson was present at the sale.

Sixth. To the sixth interrogatory, he saith: The assignment was made in Detroit, and sent to New York City, to be delivered to Mr. Thompson upon the payment of balance of purchase-money; I did not retain any copy of this assignment in my possession; according

to the best of my knowledge and belief, the paper now shown to me and marked "Schedule A.," is a copy of that assignment.

Seventh. To the seventh interrogatory, he saith: I showed him a copy of the agreement of 9th December, 1840, and to Mr. Strong, as his attorney; Mr. George W. Strong was his attorney; I have already stated my means of knowledge of his having seen this instrument.

Eighth. To the eighth interrogatory, he saith: I stated to Mr. Thompson that the debt would be sold for no less a sum than twenty thousand dollars; he tried to get it for eighteen thousand dollars.

Ninth. To the ninth interrogatory, he saith: This interrogatory has been fully answered in my answer to the seventh interrogatory; as far as regards Mr. Thompson's knowledge of the title of the State of Michigan; I had no means of knowledge of the insolvency of the Morris Canal and Banking Company.

Tenth. To the tenth interrogatory, he saith: The State of Michigan guaranteed neither its title nor the solvency of the Morris Canal and Banking Company; it only sold what right it had; this fact was fully explained to Mr. Thompson; the State of Michigan refused to give such guarantee or warrantee; during the entire negotiation, this fact was declared, and as deponent believes, fully declared at the sale.

Lastly. To the last interrogatory, he saith: I know of no other fact of advantage to the plaintiff.

C. G. HAMMOND.

Examined, taken, reduced to writing, and by the witness subscribed and sworn to this twelfth day of January, 1866, before

R. W. STRONG,
Commissioner.

First. To the first cross-interrogatory, he saith: I treated with Mr. Thompson verbally.

Second. To the second cross-interrogatory he saith: The treaty was verbal, and I kept no memorandum or minutes of the conversation, and cannot remember its terms more explicitly than already set forth in my answers to the direct interrogatories.

Third. To the third cross-interrogatory, he saith: Mr. Thompson did apply to me to sell at private sale, and I refused, informing him that the debt would be sold at auction.

Fourth. To the fourth cross-interrogatory, he saith: The date of the sale is not recollected. It was made at the Merchants' Exchange in the city of New York, notice of which had been published for a few days only. I cannot say how many days nor the number of papers in which it was advertised, nor the name of the auctioneer. It was sold under my direction and authority as representative of the State of Michigan.

Fifth. To the fifth cross-interrogatory, he saith: I cannot state how large a company attended the sale. I was present. George Griswold, George B. Fisk, Abraham G. Thompson, and Charles Butler are the only persons whom I recollect as being there.

Sixth. To the sixth cross-interrogatory, he saith: I knew both George Griswold and George B. Fisk, who were at the sale.

Seventh. To the seventh cross-interrogatory, he saith: The said debt and securities brought the sum of twenty thousand dollars. Charles Butler was the highest bidder, and they were struck off in his name. The terms of sale were cash.

Eighth. To the eighth cross-interrogatory, he saith: After the sale, Mr. Griswold informed me that he had seen Thompson, who had concluded to take the bid, and Mr. Griswold paid me three thousand dollars, as he said, in behalf of said Thompson, who would pay the whole twenty thousand dollars on the receipt of a proper assignment, to be made by the proper officers of the State of Michigan, then at Detroit, Mr. Griswold saying he would advance the three thousand dollars for the purpose of perfecting the arrangement, and receive it out of the twenty thousand dollars to be paid by said Thompson, as before stated.

Ninth. To the ninth cross-interrogatory, he saith: I know nothing of the interest of Mr. Griswold or any other person, except as before stated.

Tenth. To the tenth cross-interrogatory, he saith: I was not present at the delivery of the assignment to Thompson, being in Michigan at the time of the proposed delivery.

Eleventh. To the eleventh cross-interrogatory, he saith: The balance (seventeen thousand dollars) was paid to the credit of John J. Adams, State Treasurer of the City of New York—I believe at the Phœnix Bank; but by whom and in what sums, I cannot state.

Twelfth. To the twelfth cross-interrogatory, he saith: This interrogatory has been fully answered in my answers to the direct interrogatories.

Thirteenth. To the thirteenth cross-interrogatory, he saith: The papers and documents referring to the claim of the State of Michigan, were examined in the office of said Thompson or Strong, or both of said offices, the copy of said assignment being printed among the public documents of the Legislature of the State for the year 1840 or 1841.

Fourteenth. To the fourteenth cross-interrogatory, he saith: I know not.

Fifteenth. To the fifteenth cross-interrogatory, he saith: The title was not guaranteed, as before stated in answer to direct interrogatories.

Sixteenth. To the sixteenth cross-interrogatory, he saith: The State refused to guarantee its title by me as its representative; its refusal was communicated to all the parties in New York.

C. Y. HAMMOND.

Examined, taken and reduced to writing, and by the witness subscribed and sworn to, this twelfth day of January, 1856, before

R. W. STRONG,
Commissioner.

New York Superior Court.

JESSE HOYT
agst.
HENRY SHELDEN and others. } The Plaintiff's Exhibits.

Exhibit A.—(Exemplification of Proceedings of Court of Chancery of the State of New Jersey.)

The bill of complaint of Hoyt *v.* Thompson and others, sets forth (fol. 103) the filing of a bill in the Court of Chancery of New Jersey, by Richards & Selden against the Morris Canal and Banking Company, praying for injunction and receivers; and at fol. 111 of said bill, it is stated that, on 29th January, 1842, a decree was entered, of which the following is a copy (viz., a decree appointing receivers).

It is now admitted that Exhibit A. in this case, states as follows:

1. The said bill of Richards & Selden, sworn to by said Selden on the 11th of August, 1841.

2. Attached thereto, as Exhibit A., is the exemplification of a judgment recovered in the Supreme Court of the State of New York, in a suit commenced in July Term, 1840, by Richards & Selden against the Morris Canal and Banking Company, which judgment was signed on the 12th day of May, 1841, for $38,364 and 65 cents, and $266 and 85 cents costs, and docketed the same day.

3. As Exhibit B., attached to said bill of Richards & Selden, is a copy of the bond or obligation for $35,500, made by the Morris Canal and Banking Company, falling due on 31st March, 1840,—the payment of the interest on which is indorsed on said bond and obligation to the 30th September, 1839, and also a certificate of Thomas W. James, a notary public of the State of New Jersey, under his official seal, bearing date July 31, 1841, stating that he saw Andrew S. Garr, Esq., on day and year aforesaid, demand payment at the office of the Company, Jersey City, of the above-described bond, from Isaac Gibson, Cashier of said Company, and that such payment was refused by him. That said Garr, at same time, presented to said Gibson a paper purporting to be an exemplification of the same judgment last before referred to, and demand payment of him therefor, which payment was refused; whereupon the said James made his protest, &c.

4. The order of the Court of Chancery of New Jersey, made on 29th January, 1842, appointing receivers in the suit of said Richards & Selden (referred to in said bill), and the supplemental order of 6th

February, 1842, appointing A. C. M. Pennington as such receiver in the room of D. S. Gregory, declining to accept said appointment.

5. The oaths of said receivers respectively.

6. The following certificates by which the aforesaid exemplification is authenticated:

I, Daniel B. Bodine, Clerk of the Court of Chancery of the State of New Jersey, do hereby certify that the foregoing are true copies of the bill of complaint, and the orders for an injunction and appointment of receivers and oaths of receivers in the case wherein Abraham Richards and David Selden were complainants, and the Morris Canal and Banking Company were defendants, now remaining on file in my office.

In testimony whereof, I have hereto set my hand, and affixed the seal of said Court, at Trenton, the second day of February, in the year of our Lord 1855.

[L. S.] DAN. B. BODINE,
Clerk.

I, Benjamin Williamson, Chancellor of the State of New Jersey, do hereby certify, that Daniel B. Bodine, whose name is signed to the above certificate, is at this date the Clerk of the Court of Chancery of New Jersey, and that the said signature is in his proper handwriting, and the seal affixed thereto is the seal of the said Court, and the said certificate is in due form.

Witness my hand at Trenton, the second day of February, in the year of our Lord 1855.

B. WILLIAMSON,
Chancellor.

Exhibit B. & C.—(Exemplifications of Proceedings of Court of Chancery of the State of New Jersey.)

These exhibits were introduced as exemplifications of the records of the Court of Chancery of the State of New Jersey, the most of which embrace matters not connected with the controversy in this suit, and the following abstract of the same have been agreed upon by the respective counsel of the parties in this suit.

Exhibit B.

Contains—

1st. The petition of the receivers of the Morris Canal and Banking Company, filed October 10, 1844, addressed to the Chancellor of New Jersey, in the case of Richards & Selden, complainants, and the Morris Canal and Banking Company, defendants. The petition represents a desire of the receivers to close their trust, and asks for an order referring it to a master to examine into the nature and value of the assets, &c.

Exhibit C.

Is an order made on the 10th October, 1844, founded on the petition last aforesaid, referring to Henry A. Ford, Master, to examine and report.

Exhibit B.

Also contains—

2d. An order of the Court of Chancery of New Jersey, of the 25th December, 1844, and filed 26th December, 1844, founded on a partial report of Master Ford, dated 24th December, 1844, the matters therein referred to having no application to the present suit.

3d. The petition of Skeffington Sanxay, filed April 30, 1845, addressed to the Chancellor of New Jersey, in the case of Richards & Selden agst. Morris Canal and Banking Company. The petition sets forth the judgments owned by him, and formerly by Richards & Selden, the appointment of receivers, &c., and praying for an order directing said receivers to apply the funds in their hands to the payment of said judgments.

4th. An order of the Court of Chancery of New Jersey, dated April 29 and filed April 30, 1845, referring the last named petition to Master Ford, to inquire, &c.

5th. "Explanatory statement in reference to the assets included in the report of Henry A. Ford, Esq., one of the Masters of the Court of Chancery of New Jersey, bearing date the 26th July, 1845, and made in the case of Abraham Richards and David Selden, complainants, and the Morris Canal and Banking Company, defendants."

The explanations number from 1 to 33 inclusive, of which the following is a part, and the only part having any relation to this suit:

"No. 22. Sold by Michigan, at auction, after Long Island Company had in part compromised it, by a change of securities, and is now held by the purchasers of it at auction, as we are informed, and suppose to be true."

ELIAS B. D. OGDEN,
A. C. M. PENNINGTON,
Receivers.

(Following this, is the following statement:)

"With the exception of items in the foregoing Schedule, numbered 15, 17, 18, 19, 20, 27, 30, with which the State of Indiana is represented to be connected, I am acquainted with its situation, and believe it correctly stated in the Schedule, and I have no objection to this order.

"Oct. 29, 1845.

B. WILLIAMSON,
Attorney for the State of Indiana.

6th. Report of Master Ford, bearing date the 26th July, 1845, in which, among other things, it is said, that "I do hereby certify and report that the said receivers have, this 26th day of July, A. D. 1845, brought to my consideration, under the said order of reference, a part of the said alleged assets and property, namely, all the right, title, and interest in the lands, choses in action, security and property transferred, or pretended to be transferred, by mortgage or otherwise, by the Morris Canal and Banking Company, to the State of Indiana or its agents, on the 10th day of December, A. D. 1839, or afterwards. Also in the lands, choses in action, securities and property transferred, or pretended to be transferred, by mortgage or otherwise, by the said Company to the State of Michigan or its agents, on the 4th day of December, 1840, or afterwards."

And I do further certify and report to the Chancellor, that the Schedule hereto annexed, marked "Schedule A.," and making part of this report, embracing the said assets and property so brought to my consideration as aforesaid at this time, and mentioned and referred to in the said annexed statement of the receivers, which is respectfully submitted, together with the foregoing.

Dated 26th July, 1845. HENRY A. FORD,
Master, &c.

7th. The following letter from the receivers of Morris Canal and Banking Company:

"To Henry A. Ford, Esq., Master in Chancery:

"The receivers of the Morris Canal and Banking Company have negotiated and obtained an offer for the sale, by them, for the consideration of $6000, to Skeffington Sanxay, Esq., of New York, of all their right, title, and interest in the lands, choses in action, securities and property transferred, or pretended to be transferred, by mortgage or otherwise, by the Morris Canal and Banking Company to the State of Indiana, or its agents, on the 10th day of December, 1839, or afterwards, also, on the lands, choses in action, securities and property transferred, or pretended to be transferred, by mortgage or otherwise, by the said Company, to the State of Michigan, or its agents, on the 4th day of December, 1840, or afterwards; also, in the debts due to the Company from Edwin Lord, and E. Lord & Co., and also in the securities and property placed by the Company in the hands of D. A. Comstock, of New York, as Trustee, and in any debt due from him to the Company or the receivers."

From the examination which they have made into the above stated matters, the receivers are of opinion that their interests in them, if exposed at public sale, would probably not bring more than a nominal price, compared with this offer, that all the transactions connected with them appear to be involved in difficulty and doubts, and if liti-

gated by the receivers, would lead them into uncertain and protracted lawsuits and expensive controversies, which in their judgment would create improper burdens upon the funds and assets in their hands. The receivers therefore, are of opinion that they cannot procure a better offer, and that it will be for the interest of the trust committed to them, that this offer above stated should be accepted, and the sale made. Jersey City, July 26, 1845.

ELIAS B. D. OGDEN,
S. P. BRITTAN,
A. C. M. PENNINGTON, } *Receivers.*

(Here follows the oath of the receivers, made before Master Ford, the day last above mentioned.)

8th. Schedule A., referred to in foregoing report, schedule of lands, choses in action, securities, debts, and other property in the foregoing report mentioned and referred to.

Beginning with No. 1 and extending to No. 33, inclusive, and is the same schedule in evidence in this case, and marked "Exhibit H." (1)

9th. The report of Henry A. Ford, Master, &c., dated 20th, and filed the 21st June, 1845, upon the order of reference heretofore referred to of 29th April, 1845, based upon that part of the petition of S. Sanxay, touching the funds in the hands of receivers, claimed by him as judgment creditor, which report concludes as follows:

"I am further of opinion that the said fund now in the hands of the receivers, ought to be paid to the said Skeffington Sanxay, the petitioner, towards satisfaction of the amount due on his said two judgments, one of which was recovered by said Henry Yates, and others, and the other recovered by said Richards and Selden, in the Supreme Court, all of which is respectfully submitted. Dated Morristown, June 20, 1845."

HENRY A. FORD.

10th. An order of the Court of Chancery of New Jersey, dated the 29th and filed the 30th of October, 1845, in following words:

Upon opening the matter this day by Frederick T. Frelinghuysen, solicitor, and of counsel, with Skeffington Sanxay, a judgment-creditor of the Morris Canal and Banking Company, and it appearing by the report now on file, made by Henry A. Ford, Esquire, one of the Masters of this Court, bearing date the twentieth day of June, A. D. 1845, to whom the same was referred, which report was confirmed by the order of this Court, that the said petitioner has preference over the other creditors of the Morris Canal and Banking Company, and

is entitled to have first paid two judgments obtained in the Supreme Court of this State, against the said Morris Canal and Banking Company, one in favor of Henry Yates, and others, and one in favor of Abraham Richards and David Selden, and by them assigned to the said petitioner. And it further appearing that the said petitioner Skeffington Sanxay, is willing to receive from the said receivers certain assets mentioned in the schedule to the report of Henry A. Ford, Esquire, bearing date on the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and forty-five, at a valuation of six thousand dollars in part payment of the said judgments. And it further appearing by the report of said master, and by the statement of said receivers in connection therewith, that it is expedient and proper that such transfer should be made to the said petitioner and Benjamin Williamson, Esquire, the Attorney of the State of Indiana appearing before the Chancellor and making no objection to the same, and assenting to the same in regard to all the items in the said schedule mentioned, except numbers 15, 17, 18, 19, 20, and 27. It is therefore, on this twenty-ninth day of October, in the year of our Lord one thousand eight hundred and forty-five, ordered, that the said receivers be authorized and empowered to transfer to the said Skeffington Sanxay, and do transfer to him the said assets in the said schedule to the report of master Henry A. Ford, Esquire, mentioned at the valuation of six thousand dollars in part payment of his said judgment.

O. S. HALSTED, *C.*

11th. An order of Court of Chancery of New Jersey, dated the 4th and filed the 17th of March, 1846, in following words:

Upon opening of the matter this day, by Frederick T. Frelinghuysen, solicitor, and of counsel with Skeffington Sanxay, a judgment creditor of the Morris Canal and Banking Company, petitioning for funds in the hands of Elias B. D. Ogden, Stephen P. Brittan, and Alexander C. M. Pennington, receivers of the said Company. And it appearing by the report now on file, made by Henry A. Ford, Esquire, one of the Masters of this Court, to whom the matter was referred, bearing date the twentieth day of June, eighteen hundred and forty-five, which report has been duly confirmed by the order of this Court, that the funds in the hands of the said receivers then amounted to the sum of eighteen thousand two hundred and fifty-eight dollars and ninety-five cents, and that the said petitioner has preference over the other creditors of the Morris Canal and Banking Company, and is entitled to have the said sum paid towards the satisfaction of two judgments obtained in the Supreme Court of this State against the Morris Canal and Banking Company, one in favor of Henry Yates and others, and the other in favor of Abraham Richards and David Selden, and by them assigned to the said petitioner; and it further appearing that $11,000 of the said $18,225 34 has been

heretofore paid by the said receivers to the said Skeffington Sanxay, and that due notice of this application has been given the said receivers: it is thereupon, on this fourth day of March, 1846, ordered, that Elias B. D. Ogden, Stephen P. Brittan, and Alexander C. M. Pennington, the receivers of the said Morris Canal and Banking Company, do forthwith, on the service of this order upon them, pay to Frederick T. Frelinghuysen, solicitor of the said petitioner, towards the satisfaction of the said two judgments, the sum of four thousand eight hundred dollars, from the funds now in the hands of the said receivers as aforesaid.

O. S. HALSTED, *C.*

12th. The following certificates, by which the aforesaid exemplifications are authenticated, viz.:

"I, Daniel B. Bodine, Clerk of the Court of Chancery of the State of New Jersey, do hereby certify that the foregoing are true copies of the petitions, order of reference, master's report, &c., &c., in the case where Abraham Richards and [L. S.] David Selden were complainants and the Morris Canal and Banking Company were defendants, now remaining on file in my office. In testimony whereof, I have set my hand and affixed the seal of said Court, at Trenton, the tenth day of April, in the year of our Lord 1855.

"DANL. B. BODINE, *Clerk.*"

I, Benjamin Williamson, Chancellor of the State of New Jersey, do hereby certify that Daniel B. Bodine, whose name is signed to the foregoing certificate, is at this date the clerk of the Court of Chancery of the State of New Jersey, and that the said signature is in his proper handwriting, and the seal affixed thereto is the seal of the said Court, and the said certificate is in due form. Witness my hand this 10th day of April, in the year of our Lord 1855.

B. WILLIAMSON,
Chancellor.

The same certificate as to Exhibit C.

Exhibit D.

From printed volume called "House Documents, Michigan, 1841," page 276 to 308, inclusive, and marked B. in said Document.

(Extract.) "In Chancery.

"STATE OF MICHIGAN *versus* THE MORRIS CANAL AND BANKING COMPANY.

"To His Excellency William Pennington, Governor and Chancellor of the State of New Jersey:

"In Chancery, humbly complaining, show unto your Excellency, the complainant, the State of Michigan, that, &c., &c., setting forth

in substance and effect (page 282 of printed bill), that on 30th March, 1839, the Canal Company was indebted to Michigan $1,048,562 50, payable to the Treasurer of the State, at the following times, in the city of New York, to wit:

On	1st July, 1839,	$64,375 00
	1st October, 1839,	65,312 50
	1st January, 1840,	66,250 00
	1st April, 1840,	67,187 50
	1st July, 1840,	60,125 00
	1st October, 1840,	69,062 50
	1st January, 1841,	70,000 00
	1st April, 1841,	70,937 50
	1st July, 1841,	71,875 00
	1st October, 1841,	72,812 50
	1st January, 1842,	73,750 00
	1st April, 1842,	74,687 50
	1st July, 1842,	75,625 00
	1st October, 1842,	76,562 50
	1st January, 1843,	62,000 00

(From Printed Bill, Joint Document, p. 284.)

"And this complainant further shows unto your Excellency, that at the time of the date and giving of said two writings obligatory, hereinbefore mentioned, the said The Morris Canal and Banking Company had an office or place of business at number 45 William Street, in the city of New York, where the principal part of the banking business and other moneyed transactions was done and carried on, which office the said Company continued to occupy and use as aforesaid until some time on or about the 10th March, 1840, when the said Company, having become embarrassed in its financial concerns, and being threatened with legal proceedings on the part of their creditors, or some of them, under the laws of New York, or such legal proceedings having been actually commenced against said Company by one or more of its creditors, the said Company withdrew its business from said city, and closed its office and place of business, for the purpose, as said complainant expressly charges, of avoiding suits of their creditors, brought or which may be brought against them in the State of New York."

(Page 285.)

"And this complainant further shows unto your Excellency, that on the first day of April, 1840, an instalment of $67,187 50 became due on said writing obligatory; and on that day an agent of the complainant, for that purpose duly authorized, went to the place in said city, No. 45 William Street, where said Morris Canal and Banking Company had formerly done business as aforesaid, and being

their last place of business in said city, for the purpose of presenting said writing obligatory and demand of payment on said instalment then due on the same as aforesaid; but the same was closed, and no person could be found there of whom payment could be demanded." The statement continues, that the demand was presented to the Bank of the United States in New York, and to the North American Trust and Banking Company, and no one could be found to pay the same.

(Page 285.)

"The allegations made, that on the 22d day of May, 1840, Robert Stuart, Esquire, Treasurer, &c., visited the banking-house of the Morris Canal and Banking Company, at Jersey City, for the purpose of endeavoring to obtain payment of said instalment due on said first-mentioned writing obligatory, and to negotiate an arrangement for receiving security for the ultimate payment of the money mentioned in said writing obligatory, &c., &c.

(Page 286.)

"On or about the 27th day of August, 1840, the said Robert Stuart again visited the said banking-house for the purpose of continuing and concluding said negotiations, but was informed by said cashier that Mr. Biddle, the president, was absent in Pennsylvania, and would not return for some time; that the said Robert Stuart accordingly waited for the return of the president, and on or about the 8th day of September, 1840, again waited upon him at the banking-house of said Company, when the negotiation for giving security for the payment of said debt was resumed, and the same has been continued until on or about the second day of October, 1840, without any proposition being made by or on behalf of said Company to give security satisfactory or sufficient, although the said Robert Stuart, in behalf of this complainant, at the request of the said Edward R. Biddle, president as aforesaid, offered to extend the time for the payment of said instalments, provided the same were sufficiently secured."

(Page 299.)

"And this complainant further shows unto your Excellency that the said Morris Canal and Banking Company have become and are insolvent, and did become so insolvent on the first day of March last, within the true intent and meaning of the Act of the Legislature of the State of New Jersey, passed on or about the 16th day of February, 1829, entitled, "An Act to prevent frauds by Incorporated Companies."

(Page 300.)

"That the said Company are indebted in the sum of $1,200,000, or thereabouts besides interest upon the bonds or obligations held in England and other parts of Europe, upon which interest is payable

semi-annually, one-half year's interest whereof became due and payable on the 1st July last past, and the said Company have neglected and omitted to pay the same; and on being requested by the agents of the holders of the bonds or obligations to permit them to examine into their financial affairs and business for the confirmation and satisfaction of these principals, the said Company have refused to permit them to make such examination."

"That the said Edward R. Biddle, president of said Company, has admitted and declared to the said Robert Stuart, Treasurer of said State of Michigan, that the said Company could not, at present, pay the said instalments due to this complainant, or any part thereof, or the said debt due from them to the said State of Indiana, or the interest on the same, or the interest due on said large debts in Europe before mentioned for the want of funds."

(Page 300.)

Describes the commencement of a suit against the Canal Company by David Leavitt, president of a Banking Association called the American Exchange Bank, on a post note of said Canal Company, dated the first day of March, 1839, for $150,000, payable in 365 days after date.

(Page 301.)

"That the said Company are indebted to Abraham Richards and David Selden, upon a bond drawn by the said Company for $35,000, due and payable on the 1st day of March last past, and which bond, when the same became due and payable, was duly presented for payment, and payment thereof was demanded at the banking house of said Company within the usual and proper hours of business, and payment thereof was neglected and refused, and a suit has since been commenced thereon by said Abraham Richards and David Selden against said Morris Canal and Banking Company, by process of attachment, by virtue whereof the same real and personal estate of said Company has been attached, which was attached in said suit of David Leavitt, and the said suit is yet pending and remains a lien on said property, and the said Company nevertheless omit and neglect to pay the said post note."

"That the said Company have suspended their ordinary banking business for want of funds to carry on the same."

(Page 301.)

"And this complainant further shows unto your Excellency, that this complainant has been informed, and verily believes, and charges the fact to be, that the said Company, the directors and officers thereof, have, since the said Company became insolvent as hereinbefore stated, sold, conveyed, assigned and transferred, to divers persons

and bodies, politic and corporate, and especially to the State of Indiana, the estate, effects, choses in action, goods, chattels, rights, credits, lands and tenements, of the said Company, and which sales, conveyances, assignments and transfers, this complainant is advised and insists, are contrary to the statute in such case made and provided, and are inoperative and void."

(Page 302.)

"And this complainant insists and expressly charges the truth to be, that the whole real and personal estate of the Morris Canal and Banking Company is insufficient to pay and satisfy its just debts."

(Pages 306, 7, 8.)

"And among the prayers of said bill, was one for an injunction against, and the appointment of receivers for, said Morris Canal and Banking Company; and another of said prayers were, 'that all sales, conveyances, assignments, transfers and payments, made by the said Company, of its estates, effects, choses in action, goods, chattels, rights, credits, moneys, lands and tenements, since the first day of March last past, be set aside, and by a decree of the Court declared inoperative and void.'"

The said bill was signed as follows:

"ASA WHITEHEAD,
"*Solicitor and of Counsel for Complainant.*"

The following oath was attached to said bill (page 308):

"*State of New Jersey, ss:*

"Robert Stuart being duly sworn according to law, on his oath doth depose and say, that he is treasurer of the State of Michigan, the complainant in the foregoing bill of complaint named; that this deponent has read and understands the said bill of complaint; that the facts, matters and things therein contained and set forth, so far as the same relate to the acts or deeds of this deponent, are true within his own knowledge, and that so far as the same relate to the acts and deeds of any other person or persons, he verily believes the same to be true.

ROBERT STUART.

Sworn and subscribed before me at Newark, the 23d day of October, A. D. 1840.

O. W. KING,
One of the Masters in Chancery, New Jersey.

Exhibit E.

This Exhibit, contained in the aforesaid House Documents, at page 271 to 276, inclusive, is a copy of the same paper referred to

in the bill of complaint in this case, a copy of which is thereto annexed and marked Schedule A.

Exhibit F.

See Exhibit U., in connection.

Exhibit G.

(*From Printed Laws of Michigan for* 1840.)

"A JOINT RESOLUTION RELATIVE TO STATE PRINTER."

"*Resolved*, That George Dawson be and he is hereby appointed State Printer, under the laws of this State, providing for the appointment of State Printer, and defining his powers and duties."

"Approved January 20, 1840."

Exhibit H.

Know all men by these presents, that we, Elias B. D. Ogden, Stephen P. Brittan, and Alexander C. M. Pennington, receivers for the creditors and stockholders of "The Morris Canal and Banking Company," for and in consideration of the sum of six thousand dollars to us in hand paid by Skeffington Sanxay, of the city, county, and State of New York, the receipt whereof we do hereby acknowledge, have bargained, sold and assigned, and by these presents do bargain, sell and assign unto the said Skeffington Sanxay, his heirs, executors, administrators or assigns, all the right, title and interest of us, as such receivers as aforesaid, of, in and to all and singular, the lands, claims, demands, debts, property, estate, causes in action, counter rights, credits, goods, chattels, and effects whatever, at law or in equity mentioned, specified and described in the Schedules hereunto annexed; to have and to hold the same to him, his heirs, executors, administrators and assigns, to his and their use and benefit forever.

It being expressly understood, nevertheless, that nothing in this instrument contained shall be construed or held as a warrantee, in any manner, or under any circumstances, of the title or value of the premises hereby assigned, or in any other respect, any rule or law of equity, or anything herein contained to the contrary in any wise notwithstanding, and that this assignment is made of the said premises, subject to and with all faults, defects of title, liens, incumbrances and equities, latent or patent, to which they, or any of them, may be subject, in any wise whatsoever, and that under no circumstances, nor in any event, shall the said Skeffington Sanxay, his heirs, executors, administrators or assigns, have any right, claim or demand as against us as such receivers as aforesaid, or otherwise, our survivor or survivors, successor or successors, or the funds now or hereafter to be in our or their hands as such receivers as aforesaid, for any damages

or expenses which he or they may sustain or be put to by reason of this assignment, or any failure to realize from the premises hereby assigned, or any of them, in consequence of any fault, defect of title, lien or incumbrance, or equity, to which the said premises, or any of them, shall be subject as aforesaid, or any other cause whatsoever.

In witness whereof, we have hereunto set our hands and seals, this thirteenth day of November, in the year one thousand eight hundred and forty-five.

(Signed) ELIAS B. D. OGDEN, [SEAL.]
(Signed) S. P. BRITTAN, [SEAL.]
(Signed) A. C. M. PENNINGTON, [SEAL.]
Receivers.

Signed, sealed, and delivered in the presence of
(Signed) GEORGE B. POLLOCK.

Exhibit H (1.)

The following is all of this Exhibit it is necessary to refer to, viz., Nos. 15, 17, 18, 19, 20, 21, 27, 30, which are in words following:

No. 15.—Six hundred and fifty shares of the stock of the Planters and Mechanics' Bank, of Mobile, of $100 each, $65,000, assigned, or pretended to be assigned, by the Morris Canal and Banking Company to the State of Indiana.

No. 17.—Six hundred and twenty-five shares of the stock of the Bank of Buffalo, of $100 each, $62,500, assigned, or pretended to be assigned, by the Morris Canal and Banking Company to the State of Indiana.

No. 18.—Fifty shares of the Manchester Bank, of the State of Mississippi, of $100 each, $5000, assigned, or pretended to be assigned, by the Morris Canal and Banking Company to the State of Indiana.

No. 19.—The stock of the Mississippi and Arkansas Land Company for $40,000, assigned, or pretended to be assigned, by the Morris Canal and Banking Company to the State of Indiana.

No. 20.—Twenty-two bonds of the New York and Harlem Railroad Company, of $1000 each, $22,000, assigned, or pretended to be assigned, by the Morris Canal and Banking Company to the State of Indiana.

No. 21.—A debt due the Morris Canal and Banking Company from the Long Island Railroad Company, for $61,000, or thereabouts, assigned, or pretended to be assigned, to the State of Indiana or Michigan by the Morris Canal and Banking Company, supposed to be in judgment.

No. 27.—Two hundred and fifty lots of land and premises, said to have been conveyed to the Morris Canal and Banking Company by D. A. Comstock and wife, by deed, dated July 22, 1839, and recorded in Book F of Deeds for Jersey City, pages 74, 75, mortgaged, or

pretended to be mortgaged, by the said Morris Canal and Banking Company to Samuel Merrill, President of the State Bank of Indiana, for $980,000.

No. 30. One hundred and seventy-six certificates of the North American Trust and Banking Company, amounting to $266,000, assigned, or pretended to be assigned, by the Morris Canal and Banking Company to the State of Indiana.

Exhibit I.

To all to whom these presents shall come:

Know ye, that I, Skeffington Sanxay, of the city of New York, counsellor at law, do hereby make, constitute, and appoint Jesse Hoyt, also of New York, counsellor at law, my true and lawful attorney for me, and in my name, place, and stead, to do and perform all and everything in relation to the property and effects in the foregoing instrument named; that is to say, to sell, assign, transfer, hypothecate, compromise, barter, and exchange, convey, release, and dispose of the same, or any portion thereof, as fully and effectually as I might or could do in my own proper person, hereby ratifying or confirming all that my said attorney shall or may lawfully do in the premises, and giving and granting unto my said attorney full power and authority to appoint one or more agents or persons to enable him to perform the purposes of this letter, or to do any act that may be necessary for that purpose.

Witness my hand and seal, the twenty-fourth day of January, eighteen hundred and forty-six.

(Signed) SKEFFINGTON SANXAY. [SEAL.]

In presence of

(Signed) GEORGE B. POLLOCK.

Exhibit K.

For a good and valuable consideration, I hereby assign, transfer, and set over to Jesse Hoyt, of the city of New York, the foregoing instrument, and all my right, title, and interest therein, and to the schedule annexed thereto and hereto, and to the property, estate, and effects therein mentioned.

Given under my hand and seal, the nineteenth day of December, A. D. eighteen hundred and forty-six.

SKEFFINGTON SANXAY. [L.S.]

Exhibit L.

From House Documents, &c., page 266.

"*Special Message concerning the* $5,000,000 *Loan.*"

"To the Senate and House of Representatives:

"Gentlemen: Shortly before the commencement of your present session, the State Treasurer was enabled to bring to a close the nego-

tiations he was instructed to commence with a view to the more effectual security of the large debt owing to the State by the 'Morris Canal and Banking Company.' The act of the last Legislature, by which this duty was devolved upon the Treasurer, was well-timed and wise in its provisions." * * * * * * *

"Since your session has commenced, report has been made to me of the proceedings of the Treasurer, which it gives me great satisfaction to lay before you. * * * * * * *

"The report is accompanied by three distinct documents, marked A, B and C, which I also lay before you.

"The documents A contains the terms of the agreement entered into in its details." * * * * * * * *

"The document marked B, as you will discover, contains a full and formal exposition of the nature and character of the claims of the State in the premises, and exhibits an interesting and important view of the history of the $5,000,000 loan. In reviewing the entire transaction, the exhibit, marked C, will disclose the startling fact, that, in consequence of the mischievous and unwarranted modifications and constructions of the original contract, our young and vigorous, but much-wronged State (unless some remedy can be devised) will have incurred a loss of more than $121,881. * * *

"WILLIAM WOODBRIDGE.

"Executive Office, January 14, 1841."

Exhibit M.

Extract from House Documents, &c., page 268.

Extract Treasurer's Report on $5,000,000 *Loan.*

Detroit, January 12, 1841.

To His Excellency William Woodbridge:

"Sir—By an Act of the Honorable the Legislature of this State, approved March 31, 1840, the treasurer is required to ascertain whether any portion of the balance becoming due upon the five million loan, is not well secured, and to take such measures as he may deem for the interests of the State in relation to the same.

"In obedience to this authority, and in order promptly to discharge the responsibility thus devolved upon me, I left this city for New York, on the 18th of April last, when I ascertained that the bond of the Morris Canal and Banking Company, on which there is yet due to the State about $823,000, had been protested for nonpayment of the April instalment; and also, that the Company had failed to pay several other creditors, previous to that time. On my personal application for the amount due to the State, I was informed that they were then unable to meet their engagements. Of this, from various sources, I was fully convinced. My efforts were, there-

fore, immediately directed to obtain adequate security for the ultimate payment of the whole debt. After an unsuccessful negotiation, during several weeks, for this purpose, they stated to me that their assets, or securities, being mostly embarrassed, it was impossible for them to give such unincumbered security as I demanded; but that being actively engaged in releasing them, if I would allow them about eight weeks delay, they hoped to be able to meet my demands.

* * * * * * *

"It gives me pleasure to state that although they could not give securities to the full amount of the debt (unless I had accepted, as above declared, the mortgage on the canal, which I considered as nominal, or of doubtful character), without depriving themselves of the means of carrying on their important improvements and correct business, yet is there strong ground to hope, that through the favorable arrangement effected with most of their creditors, and from their connection with other important works of internal improvements, running through Pennsylvania, &c., the Company will recover from its embarrassments. The Indiana Commissioner is so fully convinced of this that he has advanced them, as above stated, $100,000, for the enlargement of the locks of their canal. From my own personal observations on the line of these works, as well as from information from competent judges, I feel confident that their revenue will very soon be greatly increased, by virtue of their union and arrangements with other valuable and useful transportation lines, coal companies and iron founderies now in operation on the borders of their canal. The probability too, is, that many more of these latter establishments will be erected, as it is ascertained that iron can be made with anthracite coal at $15 per ton, which must drive foreign competition out of our markets. The price being thirty to thirty-two dollars, in the city of New York. Should these expectations be realized, the Morris Canal stock might be so enhanced in value as to enable the Company to pay off all their debts; some indication of this was given in the sudden rise of their stock from nine to twenty-three per cent., as soon as it was known they had effected an arrangement with the States of Indiana and Michigan.

"The securities I have obtained amount to $621,000, and will, in my opinion, be ultimately good for at least $500,000. I transmit with this communication a copy of the agreement (marked A), exhibiting the details of the whole arrangement, also the bill (marked B) which I filed in Chancery, under the belief that further negotiations would be unavoidable. This bill sets forth my views, &c., in relation to the wrong done the State by subagreements militating against the terms of the original contract of 1st June, 1838, for the $5,000,000 loan.

* * * * * * *

"The accompanying statement (marked C) shows the different

items of loss to the State, in consequence of deviations from the legitimate agreements, amounting to nearly $122,000. * * *

"All of which is respectfully submitted by, sir,

"Your obedient servant,

"ROBERT STUART,

"*Treasurer of the State of Michigan.*"

Exhibit N.

From printed Laws of Michigan for 1839.

"*An Act to amend an Act to provide for the appointment of State Printer, and to prescribe his powers and duties.*"

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Michigan, that the State printer shall be appointed by a concurrent resolution of the Senate and House of Representatives, and shall hold his office for the term of one year, and until his successor shall be chosen and qualified.

Approved April 19, 1839.

Exhibit O.

Book of Minutes, page 313.

At a regular meeting of the board held at Jersey City, Thursday, the 31st of December, 1840, were present—the President, the Vice-President, Mr. Kinney, Mr. Bacot, and Mr. Southard:

The agreement with the State of Michigan of 9th December, 1840, was read, and the following resolution was unanimously adopted by the Board:

Resolved, That the agreement made by the Executive officers with the State of Michigan, and the accompanying papers in execution thereof, be, and the same are hereby approved; and that the Executive officers have power to comply in all respects with the provisions thereof.

(The same was also introduced by defendants in evidence, December 5, 1855.)

I certify that the above is a true copy from the minutes of book D, referred to in the evidence.

A. UNDERHILL,

Referee.

Exhibit P.

Book of Minutes, page 333.

At a meeting of the Board held 10th June, 1841, present Mr. Biddle, Lord, Bacot; there being no quorum, the Board adjourned to meet on Saturday next, at 12 o'clock.

At a meeting of the Board held 12th June, 1841, present, Mr. Biddle and Mr. Lord; there being no quorum, the Board adjourned to meet 17th June, 1841.

At a meeting of the Board held 17th of June, 1841, were present, Mr. Biddle, Mr. Lord, and Mr. Kinney; there being no quorum, the Board adjourned to meet 24th June.

At a meeting of the Board held Saturday, 17th July, 1841, were present, Mr. Lord and Mr. Biddle; there being no quorum, the Board adjourned to meet 21st, at 1 o'clock.

At a meeting of the Board held 21st of July, 1841, were present, Mr. Borrowe, Mr. Biddle, and Mr. Lord; there being no quorum, the Board adjourned to meet to-morrow, Thursday, 22d of July, at 9 o'clock.

I certify that the foregoing is a true copy from the minutes contained in book marked D, referred to in the testimony.

ABM. UNDERHILL,
Referee.

Exhibit Q.

Book of Minutes, page 296.

At a meeting of the Board held at Jersey City, 22d September, 1840, present, the President, Mr. Hurd, Mr. Lord, Mr. Bacot, Mr. Draper, Mr. Southard, and Mr. Northrop.

The minutes of the last meeting were read and approved.

In conformity with the minutes made at a previous meeting, the Board went into an election for four Directors, by ballot, when it was declared, "that George B. Fisk, of New York, was unanimously elected to fill the vacancy created by the residence of Richard Willink, of Philadelphia, of the 4th class, whose term of service was to expire in March, 1845; W. Borrowe, of New York, was elected to fill the vacancy of Garret D. Wall; Mr. Abraham W. Kinney, of Stanhope, New Jersey, to fill vacancy of Samuel Marx; Charles Yates, of New York, to fill vacancy of Henry Yates."

I certify that the foregoing is a true copy of the minutes contained in book marked D, referred to in the testimony.

ABM. UNDERHILL,
Referee.

Exhibit R.

Memorandum of an agreement made and entered into this 11th day of December, 1839, by and between the Morris Canal and Banking Company of the first part, and the State of Indiana, by Milton Stapp, its Fund Commissioner, of the second part, witnesseth, that whereas the party of the first part is indebted to the party of the second part for Indiana State stocks, heretofore delivered and sold to the party of the first part, and being desirous to have the time of payment extended, it is agreed by the parties:

First.—That the party of the first part deliver to the party of the second part certificates of deposit of the North American Trust and Banking Company, indorsed by the party of the first part, as follows:

An amount due 1st January, 1840, . . .	$50,000 00
An amount due 1st July, 1840, ...	50,000 00
An amount due 1st January, 1841, . . .	196,000 00
	$296,000 00

And Second.—For one-half of the balance of the principal due from the party of the first part to the party of the second part, they, the party of the first part, will deliver to the party of the second part their post notes, in equal payments, due on the first days of April, July, and October, 1841, and 1st January, 1842.

And Third.—The party of the first part to pay to the party of the second part the balance of the principal, to be due as follows, that is to say, in equal instalments, on the first day of January, March, May, July, September, and November, which will be in the year 1841, provided that, if the stock market should not be such, at the time when these last several payments shall become due, as to enable the party of the first part to realize a fair value on State Stocks, such as Indiana five per cent. at par, they shall have the privilege of renewing their last payments for twelve months from the time they respectively fall due. They, the party of the first part, paying six per cent. interest per annum on the extension.

And Fourth.—The said party of the first part to deliver their post notes to the said party of the second part, for all interest that may be due, payable on the 1st day of January and July in each year.

And Fifth.—The party of the first part to transfer to said party of the second part, as collateral security, a judgment against the Long Island Railroad Company for sixty thousand dollars; Harlem Railroad, seven per cent. bonds, thirty-six thousand dollars; five thousand shares of the par of fifty dollars, Beaver Meadow Railroad Company stock, two hundred and fifty thousand dollars; and one thousand six hundred shares of the Little Schuylkill and Susque-

hanna Railroad stock, eighty thousand dollars, all to be transferred unincumbered.

Sixth.—It is further understood and agreed that any surplus of securities which are by agreement to be delivered to the State Bank of Indiana, shall be considered as a pledge for the faithful performance of this agreement on the part of the Morris Canal and Banking Company.

(Signed) E. R. BIDDLE,
President of the Morris Canal and Banking Company.

(Signed) MILTON STAPP,
Fund Commissioner for Indiana.

Witness:
(Signed) WM. A. ELLERY.
(Signed) JAMES KAY.

New York, 31st December, 1839.

Received of the Morris Canal and Banking Company the following certificates of the North American Trust and Banking Company:

31 certificates, payable 1st October, 1840, amounting to sixty-two thousand dollars, say . .	$62,000 00
141 certificates, payable 1st January, 1841, amounting to one hundred and ninety-six thousand dollars, ...	196,000 00
Total, ...	$258,000 00

(Signed) MILTON STAPP.

Received, New York, 4th January, 1840, from the Morris Canal and Banking Company, the following securities:

4 certificates North American Trust and Banking Company, due 1st October, 1840, for $8000. Say eight thousand dollars.

Nos. 181, 144, 145, 146, 147, 148, 149, 150, 182, 183, 174, 175, 176, 177, 178, 179, 180.	17 Bonds of the New York and Harlem Railroad Co., for $100 each, $17,000.

(Signed) MILTON STAPP,
F. C.

Received, 4th January, 1840, from the Morris Canal and Banking Company, the following certificates of stock in the Beaver Meadow Railroad and Coal Company:

636, 635, 634, 633, 632, 631, 630, 629, 628, 627,—10 certs. of 50 shares each, . . .							500
617 to 626,	10	"	"	200	"	"	. . . 2000
602 to 616,	15	"	"	100	"	"	. . . 1500
637 and 638,	2	"	"	250	"	"	. . . 500
In all forty-five hundred shares, ...							4500

Also an assignment against the Long Island Railroad Company for $61,000—say, sixty-one thousand dollars.

Also, four post notes of this institution, of $70,000 each, amounting to two hundred and eighty thousand dollars.

And two post notes of this institution, for $24,533$\frac{95}{100}$ each, being for the interest on the total debt due to the State of Indiana, up to January, 1841.

Also, sixteen hundred shares in the stock of the Little Schuylkill and Susquehanna Railroad Company, handed to Mr. Merrill, on account of this contract.

(Signed) MILTON STAPP, *F. C.*

Received, 5th June, 1840, from J. Gibson, cashier, 596, 598, 600, 601, 599—five certificates, for one hundred shares each—in all, five hundred shares in the stock of the Beaver Meadow Railroad Company.

(Signed) MILTON STAPP, *F. C.*

Received, August 31st, 1840, from J. Gibson, cashier, five bonds of the New York and Harlem Railroad Company, for one thousand dollars each.

(Signed) MILTON STAPP, *F. C.*

Exhibit S.

Articles of Agreement made this 10th day of December, 1839, between the Morris Canal and Banking Company of the first part, and Samuel Merrill, President of the State Bank of Indiana, and his successors in office, for the use of the said State, of the second part. Witnesseth, that whereas the said party of the second part, on the 24th of April, 1839, sold to the said party of the first part one million dollars in five per cent. sterling bonds, executed on behalf of said State, by the Fund Commissioners thereof; and whereas the said party of the first part has failed to pay the sums agreed to be paid for said bonds; and whereas, under the circumstances, it is believed to be for the interest of both parties that further time should be given for making said payments on their being satisfactorily secured.

Therefore it is agreed between said parties as follows, to wit:

First. The said Morris Canal and Banking Company shall immediately, by properly executed and certified powers of attorney, assign and transfer to said Merrill, President as aforesaid, and his successors in office, for the use of said State, all the following stocks, to wit: Six hundred and fifty shares of stock in the Planters' and Merchants' Bank of Mobile, Alabama, the par price of which is $65,000; seventy-four shares in the Bank of Mobile, par price $7400; six hundred and twenty-five shares in the City Bank, Buffalo, par price $62,500; fifty shares in the Manchester Bank of Mississippi, par

price $5000; twelve thousand shares in the Little Schuylkill and Susquehanna Railroad Company, par price $600,000; also one hundred and eighty-one thousand dollars of stock, principal and interest, in the Apalachicola Land Company, and forty thousand dollars of stock in the Mississippi and Arkansas Land Company.

Second. The said party of the first part will immediately execute a mortgage on the following property which it owns in Jersey City, to wit: The Pier and Wharf at the outlet of the Canal, the actual value of which is over $110,000; also one undivided third of two hundred and ten lots, owned in company with Gregory & Henderson, and two hundred and fifty lots beught of Comstock & Andrews and others, all in Jersey City, the actual cost of which was one hundred and forty thousand dollars, which mortgage is to be made to said Merrill, President as aforesaid, clear of all incumbrances, and to his successors in office, for the use of said State, and to secure the payments hereinafter specified, but said mortgage is not to be foreclosed until after the last payment becomes due.

Third. The said party of the first part shall give the said party of the second part a four months' draft for twenty thousand dollars on the Columbus Insurance Company, Ohio.

Fourth. On the transfer of said stocks, and the execution and delivery of said mortgage as aforesaid, the sum of nine hundred and eighty thousand dollars, the consideration-money for the said State bonds, instead of being payable in monthly instalments, as was at first agreed, shall be paid hereafter, as follows, to wit: One hundred and twenty thousand dollars on the first of October, 1840, from which the said $20,000 draft, when paid, shall be deducted; one hundred and fifty thousand dollars on the first of October, 1841; two hundred thousand dollars on the first of October, 1842; two hundred and fifty thousand dollars on the first of October, 1843; and two hundred and sixty thousand dollars on the first of October, 1844.

Fifth. Whenever the said party of the second part can sell any of said stocks hereby assigned for his indemnity at a loss not exceeding ten per cent., he may sell and dispose of the same on account of the payments then first to become due.

Sixth. If the said party of the first part shall fail or neglect to pay any of said instalments, or any part thereof, as they respectively become due, then the said party of the second part may sell such part of said stocks as will pay the same for the best price they will bring; such sale to be in New York or Philadelphia, on a credit of ninety days, with approved security, and after thirty days' notice; but the said party of the first part may direct the kinds of said stock which shall first be offered for sale; but if said stocks cannot be sold without a greater sacrifice than twelve and one half per cent., then by giving further security to the extent of the value of the sum neglected to be paid, the payment of the same shall be postponed for the term of one year beyond the time herein specified; and if at that

time the said stocks cannot be sold without a greater sacrifice than twenty-five per cent., then by giving further security as aforesaid, the payment of said instalment, or instalments, shall be postponed for the further period of one year.

Seventh. The said party of the first part shall have liberty within one year and a half to return any of the said sterling bonds, or other sterling bonds of said State, of equal value, which shall be credited equally on said instalments.

Eighth. Whenever money can be raised on the bonds of said party of the first part, payable in five years or longer, to be indorsed by the said party of the second part, the same may be demanded in such sums as shall be convenient and expressing the said guarantee, and if the said State of Indiana shall authorize the same, then the said parties may proceed to raise the whole balance due, for which the guaranty herein shall continue in the hands of the said party of the second part until the whole is finally paid.

Ninth. Whenever, by part payment, the liability of the party of the first part to the party of the second part shall be diminished, a part of the securities herein specified shall be given up to the full extent of the instalments paid, and if at any time it shall be ascertained that the security herein has become insufficient, such further security may be asked and shall be given as shall be satisfactory and just.

Tenth. The said party of the first part shall pay all the interest that may accrue on said sterling bonds, or any part thereof on which payment shall not have been made; but whenever any of said bonds are fully paid for, then the State of Indiana shall pay the interest from the time of such payment.

Eleventh. Whenever the said party of the first part can sell any of said lots in Jersey City, either for cash or for security as valuable as the lots themselves, then said party of the second part will release the lien of said mortgage on receiving the consideration for which such lots may have been in good faith sold, either as part payment or substituted security as the case may be.

Twelfth. The expenses of executing the securities and of counsel to examine the same, if necessary, shall be paid by the said Morris Canal and Banking Company.

(Signed) E. R. BIDDLE,
President of the Morris Canal and Banking Company.
(Signed) SAMUEL MERRILL,
President of the State Bank of Indiana.

Witnesses:
(Signed) W. A. ELLERY.
(Signed) JAMES KAY.

Received on this agreement the following securities mentioned therein: twelve thousand shares in the Little Schuylkill and Susque-

hanna Railroad Company, $600,000; also, forty thousand dollars in the stock of the Miss. and Ack. Land Company; also, one hundred and eighty-one thousand dollars in the Apalachicola Land Company; also, sixty-two thousand five hundred dollars in the stock of the City Bank, Buffalo; also, seven thousand four hundred dollars stock in the Bank of Mobile; also, $5000 of stock in the Manchester Bank, Miss.; also, the draft referred to on the Columbus Insurance Company.

December 21st, 1839.

(Signed) S. MERRILL.

Recd., December 24th, 1839. Received on this agreement 641 shares of the stock of the Planters' and Merchants' Bank of Mobile.

SAML. MERRILL.
(Signed) By M. STAPP.

Recd. of Isaac Gibson, cashier, the mortgage alluded to in the above instrument.

SAML. MERRILL.
(Signed) By J. M. LANIER, his agent.

Exhibit T.

BANK OF THE UNITED STATES,
Suspended Debt and R. E. Department,
8th October, 1840.

Sir: A promissory note of the Morris Canal and Banking Company, and indorsed by H. J. Levis, Treasurer of the Beaver Meadow Company, dated Jersey City, 2d October, 1838, payable on the 5th October, 1840, for fifty thousand dollars, held by this bank, and duly protested for non-payment, has been placed in my hands for collection and settlement.

Before I took any steps in the matter, I should like to learn from you first whether you have any proposition to submit to the bank for its early settlement, and if so, what that proposition is. Should I not receive a reply to this communication within one week from its date, I shall then consider that you have no such proposition to make, and shall proceed accordingly.

Very respectfully yours,
HERMAN COPE,
Superintendent.

To E. R. BIDDLE, Esq.,
President Morris Canal and Banking Company.

Indorsed or backed as follows:

"No. 250.—Herman Cope, Sup. B. U. S., Philadelphia.—Oct. 8, received Oct. 9, 1840.—Ans.—Purporting to be mailed at Philadel-

phia, Oct. 8, and addressed: E. R. Biddle, Esquire, Prs. Morris Canal and Bkg. Co., New York."

Exhibits U. & F.

This Exhibit U., being the draft bill referred to in Mr. Whitehead's testimony, and Exhibit F., being the amendments thereto referred to by Mr. Foote in his testimony, together constitute the printed bill found in the House Documents, Michigan, 1841, Exhibit D., at pages 276 to 308, exclusive, except in respect to the several parts mentioned by Mr. Whitehead in his testimony as having been omitted in the draft bill, and also sundry immaterial typographical errors and the following variations and additions, to wit:

1. In regard to the non-payment of the instalments on the bond of the Morris Canal and Banking Company, which fell due on the first days of July and October, 1840, it is stated in the said printed bill, at page 287 of said House Documents, that said writing obligatory was, on the 23d day of October, 1840, at the banking house of said Company, at Jersey City, presented by Robert Stuart, Treasurer of the State of Michigan, to Edwin Lord, Vice-President of said Company, the said President and Cashier being absent, and the said Edwin Lord, Vice-President as aforesaid, then and there acting for and representing said Company in the absence of said President and Cashier, then and there demanded payment of him, as well of the said instalment due and payable on the first days of April and July last past, and also of the interest which had accrued on the same; but that the said Edwin Lord then and there refused to pay the same or any part thereof, and made answer to the said Robert Stuart that "I cannot pay it," whereas in said draft bill it is stated that on day of October, 1840, the said writing obligatory was presented by said Stuart at said banking house to "the cashier of said Company, and there and then demanded payment of him as well of the said instalment due and payable on the first day of October aforesaid as of the said two instalments due on the first days of April and July last past, and also of the interest which had accrued on the same; but that the said Cashier then and there refused to pay the same or any part thereof, and made answer to the said Robert Stuart that——" and no such variation is indicated in said amendments.

2. Immediately after the words "Dutch loan," on page 300 of said "House Documents," and 7th line, occur the following statements in said draft bill, which is omitted in said printed bill, and is not referred to in said amendments, to wit: "upon which interest is due and unpaid, and the said Company neglect and omit to pay the same."

3. The bond referred to in said printed bill, at page 301, and described as being for $35,000, is described in said draft bill, at the corresponding part thereof, as a post note for $35,500.

4. The following paragraph occurs on pages 301 and 302 of the said "House Documents," as forming a part of said bill therein printed, but is not either in the said draft bill or amendments, to wit:

"And this complainant further shows unto your Excellency, that this complainant has been informed and believes, and charges the fact to be, that the said Company, the directors and officers thereof, have, since the said Company become insolvent, as hereinbefore stated, sold, conveyed, assigned, and transferred to divers persons, and bodies politic and corporate, and especially to the State of Indiana, the estate, effects, choses in action, goods, chattels, rights, credits, lands, and tenements of the said Company, and which sales, conveyances, assignments, and transfers, this complainant is advised and insists are contrary to the statute, in such case made and provided, and are inoperative and void."

5. In said draft bill, the words "and Garrett D. Wall, two of, &c.," occur immediately after the words "Samuel L. Southard," on page 303, of said "House Documents," and no such variations is indicated by said amendments.

6. The following words, "and has been so insolvent since the first day of March last past," in said printed bill, at page 303, do not occur in said draft bill nor amendments.

7. The following paragraph occurs in said draft bill immediately after the words "rights and interests of the complaint in said printed bill, on page 304, of said House Documents," but is omitted from said printed bill without any indication or direction to that effect in said amendments, to wit: "and that some arrangement or agreement was made between the said Company and the agent of the complainant, or those acting under him, by which it was understood or agreed, that the benefits accruing to said Company, by the modifications and alterations of said original agreement, attempted to be made by said supplemental agreements, should be divided between said Company and the said agent, or those acting under him, or some or one of them."

8. The words "all and every transaction, dealing, and business, which the said Company, directors, or officers thereof, or any and which of them have had with said Stevens T. Mason, since the first day of May, in the year eighteen hundred and thirty-eight, or with any other person or persons on his behalf, or in which the said Mason had any direct or indirect interest, and also, that if the said defendants may answer and set forth," which occur in said printed bill, on page 306, of said "House Documents," are not in either said draft bill or said amendments.

9. The signature to said printed bill, and the jurat attached thereto, on page 308, of said "House Documents," are not in said draft bill or amendments.

Exhibit V.

I, Daniel B. Bodine, Clerk of the Court of Chancery of the State of New Jersey, do hereby certify, that I have made diligent search in the office-docket, and also the register, for a bill in chancery, in the cause wherein the State of Michigan is complainant, and the Morris Canal and Banking Company, defendants, and do not find any bill on file, or any record of any such bill having been filed by those parties, on the files of said Court.

In testimony whereof, I have hereunto set my hand and [L. S.] affixed the seal of said court, at the city of Trenton, the 29th day of May, in the year of our Lord, 1855.

DANIEL B. BODINE, *Clerk.*

I, Benjamin Williamson, Chancellor of the State of New Jersey, do hereby certify that Daniel B. Bodine, whose name as signed to the above certificate, is now and was of the day of the date hereof, the clerk of the Court of Chancery of New Jersey, and that such signature is his proper handwriting, and that the seal affixed thereto is the seal of the said Court, and that said certificate is in due form.

Witness my hand at Trenton, the 30th day of May, in the year of our Lord, 1855.

B. WILLIAMSON,
Chancellor.

Exhibit W.

For a valuable consideration to the Morris Canal and Banking Company, paid by Milton Stapp, of the State of Indiana, the Morris Canal and Banking Company, do assign and set over all the right, title, claim, interest, property and demand whatsoever, of the said The Morris Canal and Banking Company, of, in and to all and singular, the promissory notes and bills of exchange, mentioned and described in the list on schedule hereto annexed, unto the said Milton Stapp, his executors, administrators and assigns.

In witness whereof, the said The Morris Canal and Banking Company have hereunto by the hand of their president, set their corporate seal, the fifth day of October, in the year of our Lord one thousand eight hundred and forty.

E. R. BIDDLE, [L. S.] *President.*
Attest, ISAAC GIBSON, *Cashier.*
Witness, JAMES KAY.

Schedule.

(Here follows a list of ninety-nine promissory notes and bills of exchange, particularly described, and amounting in all to the sum of $248,495 68.)

Exhibit X and Nos. 5, 2, 1, 6, 3, 4.

It is consented that the following abstract be substituted for the original Exhibits named above:

1st. The Exhibit X recites as follows: Know all men by these presents, that whereas the undersigned (namely), Abraham Richards and David Selden, heretofore recovered several judgments in the States of New York and New Jersey, against the Morris Canal and Banking Company, that is to say:

First. Supreme Court of New York, 12th of May, 1841, for debt,	$38,364 65
Damages and costs,	266 65
Second. In Supreme Court of New Jersey (in action on first-mentioned judgment, 7th of September, 1841, debt,	38,631 30
Damages,	863 85
Costs,	34 34
Third. A judgment in Circuit Court of Hudson County, in an action on a bond, in State of New Jersey, on 28th of December, 1841, for debt,	15,000 00
Damages,	1,683 33
Costs,	44 53
Fourth. A judgment in Supreme Court of State of New York (in an action on the first-mentioned judgment and the said bond), on the 1st of April, 1842, for debt,	56,964 27
Damages and costs,	995 46
The said Exhibit X then recites the recovery of a judgment by Messrs. Yates, Talmage and Noyes, against the Morris Canal and Banking Company, in Supreme Court of New Jersey, on the 7th day of September, 1841, for debt,	10,000 00
Damages,	1,218 02
Costs,	27 17

And the assignment of same to David Selden.

Said Exhibit also recites recovery of judgment property by W. S. Nichols against Morris Canal and Banking Company, in Supreme Court of New Jersey, on 12th of November, 1841, for $\$543\frac{84}{100}$ damages and costs, and the assignment of both to David Selden.

The said Exhibit also recites the issue of execution on all the above mentioned six judgments, and goes on to assign to Skeffington Sanxay, all of said judgments, and which assignment bears date the 17th of December, 1844.

On the same paper and part of said Exhibit X, is an assignment

and transfer of the same by Sanxay to Jesse Hoyt, the plaintiff, under date of 19th December, 1846.

Exhibit No. 5,

Is a transcript of the judgment mentioned in Exhibit X, for	$38,164 65
Damages and Costs, ...	266 65

Exhibit No. 2,

Is an exemplification of judgment, mentioned in Exhibit X, for	$38,631 30
Damages and costs, ...	898 19

Exhibit No. 1,

Is an exemplification of judgment, mentioned in Exhibit X, for	$16,727 83

Exhibit No. 6,

Is a transcript of judgment, mentioned in Exhibit X, for debt, ...	$56,964 27
Damages and costs, ...	995 46

Exhibit No. 3,

In exemplification of judgment, mentioned in Exhibit X, for debt, ...	$10,000 00
Damages, ...	1,218 02
Costs, ...	27 17

Exhibit No. 4,

Is an exemplification of the judgment recovered by Nichols against Morris Canal and Banking Company, for	$543 84

There is no proof of the assignment from Nichols to Selden of the above judgment.

Exhibit Y.

This bears date the 7th March, 1843, and is an assignment of a judgment by Thomas G. Talmage, Henry Yates, Wm. C. Noyes, to David Selden, against the Morris Canal and Banking Company, obtained the 7th day of September, 1841, in the Supreme Court of the State of New Jersey, for the amount of said bond (viz.: the bond

of Morris Canal and Banking Company for $10,000), and for $1,245 19, damages and costs. The said paper is signed by the parties (plaintiffs) above named, and by David Selden, and witnessed by A. Dwight Williams.

Exhibit Z.

Extract from "Report of the Board of Directors of the Long Island Railroad Company, to the stockholders in relation to the condition of its affairs and prospects when completed to Greenport," bearing date, "New York, June 15, 1843," and signed, "by order of the Board, Geo. B. Fisk, President."

(From pages 2 and 3 of the printed Report.)

The debts and liabilities of the Company are as follows, and payable at the periods stated, viz.:

To the State of New York, payable in 1861, . .	$100,000 00
In a second mortgage on the road, being a debt originally contracted to the Morris Canal and Banking Company, of $60,000, of which $20,000 was paid, and the mortgage for the balance of $40,000 is now held by A. G. Thompson, with whom an arrangement has just been concluded to defer the payment for 4, 5, 6 and 7 years, .	40,000 00
Bonds issued in 1840, at 10 years, at 6 per cent. interest, for the Hempstead Branch, . . .	12,851 44
Bonds for rent and interest to the Brooklyn and Jamaica R. R. Co., payable in ten years from June, 1842,*	57,922 00
Four year Bonds issued to Contractors, and for materials, due in 1845, '46, and '47, . . .	37,309 05
Bonds issued for Iron, Locomotive Engine, Materials, &c., due within the next six months, . .	12,384 24
Bonds at ten years issued to residents of Long Island for money loaned at 6 per cent. and expended in the construction of the Road, . . .	16,825 00
	$277,292 23

The receipts and expenditures of the road as far as constructed and operated upon from May, 1842, to May, 1843, are as follows:

Receipts for passengers, . .	$46,241 63	
" freight, . .	9,490 21	
		$55,731 84

The expenses for the same period are—

Interest on New York State Loan,	$6,000 00	
Interest paid on Morris Canal debt,	1,506 62	
Rent to Brooklyn and Jamaica Railroad Company, . .	8,000 00	
For all other purposes, as expenses proper in conducting the road, including repairs, . .	37,134 74	
		$52,641 36
		$3,090 48

The balance of $3,090 48, together with two instalments of one-half per cent. each, or $14,500, called during the past year, has been expended in continuing the construction of the road, and for which sum, as well as all other moneys expended, vouchers are on file.

Exhibit No. 7.

Copy of the notices sent to the Indorsers.

Jersey City, N. J., March 31st, 1840.

To (names of persons addressed).

Please to take notice that the Morris Canal and Banking Company's bond for thirty-five thousand five hundred dollars, and interest, indorsed by you, was this evening protested for non-payment; and the holders look to you for the payment thereof.

Respectfully, yours,

(Signed) THOS. W. JAMES,
Notary Public.

The two notices (of which the above is a true copy) were put into the post-office in Jersey City by me, this 31st day of March, A. D. 1840, at 5 o'clock, P. M. One of them was addressed to "Mr. A. Richards, New York City," and the other to "Mr. Thos. Vermilya, New York City." No notice was sent to Mr. Colin Mitchel, at the request of Mr. Henn.

(Signed) THOS. W. JAMES,
Notary Public.

United States of America, } ss.
State of New Jersey, }

On the thirty-first day of March, in the year of our Lord one thousand eight hundred and forty, at the request of Frederick Henn, Esq., of the city of New York, I, Thomas W. James, a Notary Public, duly appointed, commissioned, and sworn, residing in Jersey City, went to the office of the Morris Canal and Banking Company, in Jersey City, and demanded payment for a bond (a true copy of which

is indorsed on the other side hereof) from Mr. Bacott, the teller, to which demand he then and there replied, "We can't pay it."

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents, do publicly and solemnly protest, as well against the drawers and indorsers of the said bond, as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages, and interests already incurred, and to be hereafter incurred, for want of payment of the said bond.

(Notary's Seal.) Thus done and protested in the City of Jersey aforesaid, in the presence of John Doe and Richard Roe, witnesses:

In testimonium veritatis.

(Signed) THOS. W. JAMES,
Notary Public.

Copy of the bond within mentioned.

$35,500. No. 3.

The Morris Canal and Banking Company acknowledge themselves indebted to Colin Mitchel in the sum of thirty-five thousand five hundred dollars, lawful money of the State of New Jersey, which sum they promise to pay to the said Colin Mitchel, or his assigns, at their banking-house in Jersey City, on the 31st day of March, 1840, with interest semi-annually, at the rate of five per cent. per annum.

In witness whereof, the said Company have caused this bond to [L. S.] be attested on their behalf by their President and Cashier, and their common seal to be hereunto affixed, at their office in Jersey City, this 31st day of March, 1836.

ROBERT GILCHRIST,
Cashier.

LOUIS McLANE,
President.

Thirty-five thousand five hundred dollars.

Written across the face: "Payable on the 31st day of March, one thousand eight hundred and forty."

(Indorsed.)

Received, Oct. 1, 1836, of the Morris Canal and Banking Company, eight hundred and eighty-seven dollars fifty cents, being the first half-year's interest due on this bond.

$887 50. THOMAS VERMILYA,
Assignee.

Received, March 31st, 1837, of the Morris Canal and Banking Company, eight hundred and eighty-seven dollars fifty cents, being for half-year's interest on this bond, due to-day.

$887 50. THOS. VERMILYA,
Assignee.

Received, June 30th, 1837, of the Morris Canal and Banking Company, eight hundred and eighty-seven dollars fifty cents, being for half-year's interest on this bond, due 30th of September next.

THOS. VERMILYA.

Received, New York, 31st March, 1838, of the Morris Canal and Banking Company, eight hundred and eighty-seven dollars and fifty cents, being interest due on the within this day.

$887 50. A. RICHARDS.

A. RICHARDS,
THOS. VERMILYA.

Received, New York, 12th Sept., 1838, of the Morris Canal and Banking Company, seventeen hundred and seventy-five dollars, being interest on said bond, due Sept. instant, and 31st March, 1839.

$1775. A. RICHARDS.

Received, New York, 26 November, 1839, of the Morris Canal and Banking Company, eight hundred and eighty-seven dollars and fifty cents, being interest due on this bond to 30th September last past.

$887 50. A. RICHARDS.

COLIN MITCHEL.

UNITED STATES OF AMERICA, } ss.
State of New Jersey. }

I, Thomas W. James, a Notary Public, duly appointed, commissioned, and sworn, residing at Jersey City, in said State, do hereby certify that the foregoing is a true copy of the record of a protest, and proceedings thereon, from my notarial register.

[L. S.] Given under my hand and notarial seal, at Jersey City aforesaid, this twenty-sixth day of September, A. D. 1855.

THOS. W. JAMES,
Notary Public.

Exhibit No. 9.

Superior Court.

JESSE HOYT
v.
HENRY SHELDEN, Executor, and others.

STATE OF NEW JERSEY, } ss.
County of Mercer. }

Asa Whitehead, being duly sworn, maketh oath, that he resides in Newark, in the State of New Jersey, and has heretofore been examined as a witness in the above entitled cause, before the Referee therein, in the city of New York.

And the deponent further says, that the affidavit of Andrew S. Garr, purporting to have been affirmed to on the seventeenth day of October, in the year 1840, and entitled in the suit "In Chancery of New Jersey, the State of Michigan *v.* The Morris Canal and Banking Company, Edward N. Biddle, Isaac Gibson, and Samuel L. Southard," and the affidavit of the same Andrew S. Garr purporting to have been affirmed to on the nineteenth day of the same month, entitled in the same suit, and the two affidavits of John J. Fiske, purporting to be sworn to on the seventeenth day of the same month, and entitled in the same suit; and the affidavit of Anezi Armstrong, purporting to be sworn to on the twenty-third day of the same month, and entitled in the same suit; and the affidavit of Thomas W. James, purporting to be sworn to on the twenty-third day of the same month, and entitled in the same suit; and the affidavit of Thomas W. James, purporting to be sworn to on the twenty-third day of the same month, and entitled in the same suit (such affidavits being produced and shown to me), were and each of them was prepared, and had for use in the cause in which they are entitled, and at or about the times at which their jurats respectively are dated, for and in behalf of the State of Michigan, the complainant in said suit, and were in the hands of the counsel of said State of Michigan, for use in its behalf in said suit, the same having been prepared under the direction of said counsel.

And this deponent further says, that he has marked said affidavits for identification, each with his initials, and numbered the same from 1 to 6, inclusive, and further says not.

ASA WHITEHEAD.

Sworn to before me, this 3d day of October, A. D. 1855.

WM. C. HOWELL,
Commissioner.

STATE OF NEW JERSEY, }
Mercer County. } ss.

I, William C. Howell, a Commissioner for the State of New York, residing at the city of Trenton, in the County of Mercer, and State of New Jersey, do certify, that on the third day of October, one thousand eight hundred and fifty-five, the above named Asa Whitehead subscribed the foregoing affidavit in my presence, at the city of Trenton, in the county of Mercer aforesaid, in the State of New Jersey, and did depose and swear that the matters therein set forth were true.

In witness whereof, I have hereunto set my hand and affixed my official seal, this third day of October, in the year one thou-
[L. S.] sand eight hundred and fifty-five, at the city of Trenton, in the county and State aforesaid.

WILLIAM C. HOWELL,
A Commissioner of the State of New York.

Exhibit No. 9, A.

In Chancery of New Jersey.

THE STATE OF MICHIGAN
v.
THE MORRIS CANAL AND BANKING COMPANY, EDWARD R. BIDDLE, ISAAC GIBSON, and SAMUEL L. SOUTHARD.

Hudson County, ss.

Andrew S. Garr, of Jersey City, in the county of Hudson, being duly affirmed, saith, that he is a practising attorney and counsellor in the Supreme Court of the State of New York; that as such attorney and counsellor, he commenced in the said Court, on the said 26th day of June last past, an action of debt by attachment, on behalf of Abraham Richards and David Selden as plaintiffs, against the Morris Canal and Banking Company as defendants; that several issues of fact were joined in the said suit, and the same were noticed for trial at the last Circuit Court, held in and for the city and county of New York, but the cause was not reached; that the attachment above mentioned was directed and delivered to the sheriff of the city and county of New York, and by virtue thereof the said sheriff attached a large amount of real and personal property of great value, the precise amount of which this affirmant is unable to state, and which had been previously attached in a suit commenced in the said Supreme Court by David Leavitt, President of the American Exchange Bank, against the said Morris Canal and Banking Company, that the said action was brought by the said Abraham Richards and David Selden, as assigns of a bond, under the common seal of the said Morris Canal and Banking Company, and attested by their then President and Cashier, bearing date on the thirty-first day of March; one thousand eight hundred and thirty-six, for the sum of thirty-five thousand five hundred dollars, payable to Colin Mitchel or his assignees, at their banking house in Jersey City, on the thirty-first day of March, one thousand eight hundred and forty, with interest semi-annually, at the rate of five per cent. per annum; that, as this affirmant has been informed, and verily believes to be true, the said bond was, on the thirty-first day of March last past, during the usual and proper hours of business, presented for payment at the banking house, in Jersey City, of the said Morris Canal and Banking Company, by Thomas W. James, Esquire, a public notary of that city; that the said notary then and there demanded payment thereof, and

that to such demand the paying teller replied, "We can't pay it." Whereupon the said notary protested the said bond for non-payment.

ANDREW S. GARR.

Affirmed, this 17th day of October, 1840, before me, at Jersey City.

PETER BENTLEY,
Master in Chancery, New Jersey.

Exhibit No. 9, *B.*

In Chancery of New Jersey.

THE STATE OF MICHIGAN
v.
THE MORRIS CANAL AND BANKING COMPANY, EDWARD R. BIDDLE, ISAAC GIBSON, and SAMUEL L. SOUTHARD.

Andrew S. Garr, of Jersey City, in the county of Hudson, and State of New Jersey, being duly affirmed, saith: That on the twenty-second day of August last past, he commenced in the Supreme Court of the State of New Jersey, as an attorney of that Court, an action of debt on behalf of Abraham Richards and David Selden, as plaintiffs, against the Morris Canal and Banking Company, as defendants, upon the same bond that is mentioned and described in the affidavit of this affirmant made in this cause, on the seventeenth day of October, instant, at Jersey City, before Peter Bently, Esquire, one of the masters of this honorable Court.

That said suit was commenced by summons, returnable on the second Tuesday of September last past, and which appears, by the sheriff's return, was served personally on the cashier of the said Morris Canal and Banking Company.

That this affirmant, on the twenty-eighth day of September last past, filed a declaration in said suit, to which declaration the said Morris Canal and Banking Company have not yet pleaded, to his knowledge or belief.

ANDREW S. GARR.

Affirmed, at the city of New York, this 19th day of October, 1840, before me,

WM. H. MAXWELL,
Commissioner under the Act of the Legislature of the State of New Jersey, passed 27th December, 1824.

Exhibit No. 9, C.

In Chancery of New Jersey.

THE STATE OF MICHIGAN
v.
THE MORRIS CANAL AND BANKING COMPANY, EDWARD R. BIDDLE, ISAAC GIBSON, and SAMUEL L. SOUTHARD. } Affidavit.

CITY AND COUNTY OF NEW YORK, } ss.
In the State of New York, }

John J. Fisk, of said city and county, being sworn, says, that he is the cashier of the American Exchange Bank, of the same place, and has been such cashier for one year and upwards. That in the month of February last past, the said American Exchange Bank were the owners and holders of a post note made and issued by the above-named Morris Canal and Banking Company, for one hundred and fifty thousand dollars, bearing date the first day of March, in the year 1839, at Jersey City, and payable three hundred and sixty-five days after date to this deponent, cashier, trustee, or order, and indorsed by this deponent, cashier, trustee to David Leavitt, President of said American Exchange Bank. That by special agreement between the said Morris Canal and Banking Company, the said post-note became due and payable on the first day of March, 1840, for the amount of an indebtedness from the said Morris Canal and Banking Company to the said American Exchange Bank, and for which such bank, by said special agreement, held said post note. That there was due on said post note from the said Morris Canal and Banking Company to the said American Exchange Bank, on the first day of March last, the sum of one hundred and twenty thousand one hundred and thirty-nine dollars and fifty-nine cents; that such first day of March being Sunday, this deponent, on the twenty-ninth day of February last, being Saturday, demanded payment of the amount due as aforesaid on said post note of the said Morris Canal and Banking Company, and payment thereof was neglected and refused, and which demand was made during the usual and proper hours of business upon the cashier of the said Morris Canal and Banking Company, at the banking-house of such Company, in the city of New York, and to which demand the said cashier replied that a proposition would be made to said bank for the settlement of the same; that again on the third day of said March last, the said demand was repeated upon the said cashier during the usual and proper hours of business, and payment of the amount due upon said post note neglected and refused. That upon the tenth day of said March last, there then being due on said post note the sum of one hundred and twenty thousand three hundred and forty-six dollars and ninety-seven cents, a suit was com-

menced in the Supreme Court of the said State of New York by the said David Leavitt, President, &c., for and on behalf and for the benefit of the said American Exchange Bank, against the said Morris Canal and Banking Company upon the said post note, and to enforce the payment of the said amount due thereon, which suit was commenced, as this deponent is informed and believes, by attachment, returnable in the said Supreme Court, on the first Monday of May last, and by virtue of which attachment the sheriff of the said city and county of New York seized and attached a large amount of real and personal property, the precise value whereof this deponent cannot state, but believes such value to be one hundred and fifty thousand dollars, and it may far exceed that sum. That this deponent has been informed and believes, that issue was joined in said suit, on or about the fourth day of June last, and the same was noticed for trial, on the first Monday of July last, and on the twentieth day of said July, the said cause was referred to three referees, to hear the parties therein and report the amount due to the said American Exchange Bank. That said cause has since been heard by said referees, and the said referees made their report yesterday, by which it appears they have reported that there was due the said American Exchange Bank from the said Morris Canal and Banking Company, on the day of making said report, the sum of one hundred and sixteen thousand and eighty-two dollars and seventy-nine cents, and upon which report this deponent is informed and believes a judgment will be entered in a few days, and further says not.

JOHN J. FISK.

Sworn before me, this 17th day of October, 1840.

WM. H. MAXWELL,
Commissioner under the Act of the Legislature of the State of New Jersey, passed 27th December, 1826.

Exhibit 9, *D.*

In Chancery of New Jersey.

THE SAME,
v.
THE SAME,

CITY AND COUNTY OF NEW YORK,
In the State of New York, } ss.

John J. Fisk, named in the above affidavit, being further sworn, says, that the above-named Morris Canal and Banking Company, previous to the first day of March last, had a banking-house and banking establishment in the said city of New York, at which they transacted, as this deponent is informed and believes, the principal part,

if not the whole of their banking business, and that the said Company discontinued their said banking establishment in the said city of New York, as this deponent is informed and believes, on or about the first day of March last, or on some day between that day and the tenth day of said March, and have not since the last-mentioned day, to the knowledge and belief of this deponent, kept or occupied any place in said city for the transaction of banking business, and this deponent further saith not.

JOHN J. FISK.

Sworn before me this 17th day of October, 1840.

WM. H. MAXWELL,
Commissioner under the Act of the Legislature of the State of New Jersey, passed 27th December, 1826.

Exhibit 9, *E.*

In Chancery of New Jersey.

Between
THE STATE OF MICHIGAN, Complainant,
and
THE MORRIS CANAL AND BANKING COMPANY, and others, Defendants.
} On Bill.

New Jersey, Essex County, ss.

Anezi Armstrong, attorney-at-law, of the city of Newark, being duly sworn on his oath, deposeth and saith, that, as attorney for David Leavitt, he commenced an action in favor of said Leavitt against the Morris Canal and Banking Company, by writ of summons returnable at the term of May last, in the Supreme Court of Judicature of the State of New Jersey, and that said action and the declaration therein are founded on a post-note of the said The Morris Canal and Banking Company for one hundred and fifty thousand dollars, dated March first, A. D. 1839, and payable three hundred and sixty-five days after date, to the order of John J. Fisk, Esq., cashier and trustee, or order, and by him indorsed; that the said The Morris Canal and Banking Company have pleaded to the declaration in said action the general issue, and also payment and other matters; and that the said action is still pending and undetermined.

A. ARMSTRONG.

Sworn to and subscribed at Newark, Essex county, New Jersey, this twenty-third day of October, A. D. 1840, before me,

WILLIAM M. SCUDDER,
Master in Chancery.

Exhibit No. 9, *F, and No.* 8.

In Chancery of New Jersey.

Between
THE STATE OF MICHIGAN, Complainant,
and
THE MORRIS CANAL AND BANKING COMPANY, EDWARD R. BIDDLE, and SAMUEL L. SOUTHARD and ISAAC GIBSON, Defendants.

State of New Jersey, County of Hudson, ss:

Thomas W. James, of Jersey City, being duly sworn, on his oath says, that he is a notary public, and resident at Jersey City; that on the thirty-first day of March, eighteen hundred and forty, this deponent, as such notary as aforesaid, between the hours of ten in the forenoon and four in the afternoon of said day, presented at the banking house of The Morris Canal and Banking Company, at Jersey City, for payment, a bond made by said Company, under their common seal, bearing date the thirty-first day of March, eighteen hundred and thirty-six, payable to Colin Mitchel or his assigns, at the banking house of said Company at Jersey City, on the thirty-first day of March, eighteen hundred and forty, with interest at five per centum per annum, payable semi-annually, said bond being for the sum of thirty-five thousand and five hundred dollars; that this deponent then and there demanded payment of said bond from Mr. Baest, the paying teller of said Company, who made answer to such demand, "We can't pay it," giving this deponent to understand that the said Company could not then and there pay the said bond; and the said Company then and there neglected and refused to pay said bond, and this deponent thereupon protested the same for non-payment; all of which facts appear by this deponent's book of record, and which he believes to be true and correct.

THOS. W. JAMES.

Sworn and subscribed before me, October twenty-first, A. D. 1840, at Jersey City.

LEWIS D. HARDENBERGH,
Master in Chancery.

Exhibit No. 10.

It is consented that the following abstract be substituted for the original Exhibit:

1. An affidavit of William H. Pinchney, clerk in Attorney-General's office of Michigan, made on 3d of October, 1855, that he has made search among the papers on file, both in the Attorney-General's

office and the Executive Department, for the original bill, a copy of which purports to be printed on pages 276 to 308, inclusive, in House Documents of said State, for the year 1841, and was unable to find the same in either of said departments.

2. The affidavit of Charles Hunt, Deputy State Treasurer, made on the 2d of September, 1855, that he had made diligent search in the office of State Treasurer for the paper described by Mr. Pinchney, and that said bill is not on file, or deposited or recorded in said office.

3. The affidavit of Charles W. Butler, Deputy Auditor-General of Michigan, that he has made search among the papers in the office for the bill (as described as above), and has been unable to find the same in said office.

4. The certificate of Rodney R. Gibson, Deputy Secretary of State of Michigan, that he had made diligent search in that office for the bill (described as above), and that said bill is not on file or deposited in said office, and that there are no other offices where it could or should be filed or recorded, or deposited lawfully, except the Executive, Auditor-General, State Treasurer, or Attorney-General.

In testimony, &c., 29th of September, 1851. [L. S.]

Exhibit No. 11.

(From the printed Laws of Michigan for 1842, p. 110.)

An Act to provide for the collection of certain assets transferred to the State, and for other purposes.

Approved February 17, 1842.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Michigan, "That the Auditor-General, State Treasurer, and Secretary of State for the time being, be, and the same are hereby, constituted trustees in behalf of the State, to take charge of the assets assigned to the State by the Michigan State Bank, and such other assets or property as may have been or shall hereafter be conveyed to the State in payment of other debts, or become the property of the State as collateral security, securities, or otherwise."

Section 3. Said trustees shall have power, upon receiving satisfactory security, to extend the time for the payment and settlement of any of the assignments, assets, debts, or securities, as aforesaid, or to compromise in such manner, for such terms, as in their judgment will be for the best interests of the State, and shall also have power to lease, sell, or convey, any assets or property assigned to the State as aforesaid: Provided, That the said trustees shall do no act which shall release the Michigan State Bank, its directors, or stockholders, from the liability to the State, for any balance which, after realizing the amount of money which may be collected from the property or

other assets assigned to the State by said bank, may still be fou due from said institution, its directors or stockholders.

Exhibit No. 12.

The Act of the Legislature of New Jersey, entitled "An Act to prevent frauds by incorporated companies."

Also, the several acts of New Jersey, of which copies are annexed to bill of complaint.

It is agreed that the original Exhibits, which are above abbreviated or abstracted, may be referred to by either party on the hearing of this cause.

Defendants' Exhibits.

Exhibit A. & A.

New York Superior Court.

JOHN CRYDER AND WILLIAM S. WITMORE,
against
JESSE HOYT, GEORGE GRISWOLD, THE MORRIS CANAL AND BANKING COMPANY.

JESSE HOYT,
against
JOHN CRYDER, JAMES MORRISON, WILLIAM S. WITMORE, GEORGE GRISWOLD, and STEPHEN WHITNEY.

Whereas, I, the undersigned, Jesse Hoyt, am now the owner and holder of ten certain obligations called sterling bonds, for one thousand pounds sterling, each purporting to have been issued by the Morris Canal and Banking Company, signed Lewis McLane, president, and Robert Gilchrist, cashier, and bearing date the first day of January, 1836, and payable on the first day of January, 1846, at the banking house of Messrs. Morrison, Cryder & Co., of London, all made payable to Edwin Lord, Esquire, and indorsed by him, which said bonds are respectively marked and designated by the numbers, eleven, twelve, thirteen, fourteen, fifteen, fifty-one, fifty-two, fifty-three, fifty-four, and fifty-five.

And whereas, also, previous to the sixteenth day of May, eighteen hundred and forty-six, Elias B. D. Ogden, Stephen P. Brittan, and Alexander C. M. Pennington, were, by the Court of Chancery of the State of New Jersey, in a suit therein pending between Abraham Richards and David Selden, complainants, and the Morris Canal and

Banking Company, defendants, duly appointed receivers of all the goods and chattels, rights and credits, money and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description belonging to the said Morris Canal and Banking Company at the time of their insolvency or suspension of business as set forth in the bill of complaint in the said suit, with power to sell, convey and assign all the said real and personal estate, which said appointment was accepted by the said Ogden, Brittan, and Pennington, who, thereupon duly qualified and entered upon the discharge of their duties as such receivers; and whereas, afterwards made on the sixteenth day of May, eighteen hundred and forty-six, the said Elias D. B. Ogden, Stephen P. Brittan, and Alexander C. M. Pennington, as such receivers, having under and by authority of the said Court, and in pursuance of the laws of the said State made the sale and assignment hereinafter mentioned, duly executed under their respective hands and seals and delivered to Skeffington Sanxay, of the said city of New York, their deed or instrument in writing, which was made to him for the benefit and on account of the undersigned, the said Jesse Hoyt, in the words and figures following, that is to say:

Know all men by these presents, that we, Elias B. D. Ogden, Stephen P. Brittan and Alexander C. M. Pennington, receivers for the creditors and stockholders of the Morris Canal and Banking Company, all of the State of New Jersey, for, for and in consideration of the sum of four thousand dollars, lawful money of the United States of America, to them in hand well and truly paid, by Skeffington Sanxay, of the city and county and State of New York, the receipt whereof is hereby acknowledged as such receivers as aforesaid, have bargained, sold, and assigned, and by these presents do bargain, sell and assign unto the said Skeffington Sanxay, all the right, title, and interest belonging to, or vested in us by virtue of our appointment as such receivers as aforesaid, of, in, and to the assets, securities, judgments, and property particularly set forth and specified in the schedules annexed to a report made by Henry A. Ford, Esq., a Master in Chancery of the State of New Jersey, on the eleventh day of May, 1846, which report was confirmed by the Chancellor on the same day, and with the said schedule will be on file in the office of the Clerk in Chancery of the State of New Jersey, in a suit wherein Abraham Richards and David Selden are complainants, and the Morris Canal and Banking Company are defendants, in which suit we were appointed such receivers as aforesaid, to have and to hold the same to him the said Skeffington Sanxay, his executors, administrators, and assigns, to his and their own proper use and benefit and behoof forever, subject, nevertheless, to all the faults, defects of title, liens, incumbrances and equities of whatever nature or kind the same may be, patent and latent, to which the same or any of them are in any wise subject in our hands as such receivers aforesaid, anything herein, or any rule of law or equity, to the contrary in anywise not-

withstanding that nothing herein contained shall be constructed or held in any manner, or under any circumstances to be a warranty in any respect in regard to the same, and that in no event, and under no circumstances, shall the said Skeffington Sanxay, his executors, administrators, or assigns, have any right as against us as such receivers as aforesaid, or otherwise, or as against the survivor or survivors, successor or successors of us, or either of us, or as against the trust fund, or any part thereof, now or hereafter to be in his own hands, or in the hands of the survivor or survivors, successor or successors, of us, to have this contract, or any part thereof, in the whole or in part rescinded or avoided, or to have the whole or any part of the consideration refunded or returned, or to have any damages which he or they may suffer or to be put to in respect to the said assets, securities, judgments, and property, or any part of them, in any manner whatsoever, and we do hereby, as far as we have a right so to do, authorize and empower the said Skeffington Sanxay, his executors, administrators, and assigns, to use our names, as such receivers, or the name of the Morris Canal and Banking Company, in the collection of the same, but at their own costs, expenses and risk.

In witness whereof, we, as such receivers, have hereunto set our hands and seals, this sixteenth day of May, in the year of our Lord, one thousand eight hundred and forty-six.

ELIAS B. D. OGDEN,
S. P. BRITTAN,
A. C. M. PENNINGTON.

Sealed and delivered in the presence of
D. SMITH,
Jersey City.

And whereas, subsequently, and on the nineteenth day of December, eighteen hundred and forty-six, the said Skeffington Sanxay, at the foot of the instrument or deed of trust mentioned, duly made and executed under his hand and seal, and delivered to me, together, with such last-mentioned deed, his deed or instrument in writing, of which the following is a copy:

For and in consideration of certain sums to me paid, I hereby assign, transfer, and set over to Jesse Hoyt, of the city of New York, the foregoing instrument and all my right, title, and interest therein or to the property, estate, and effects therein or thereby conveyed or intended so to be.

Given under my hand and seal, the nineteenth day of December, A.D. eighteen hundred and forty-six.

SKEFFINGTON SANXAY. [L. S.]

Whereby, I, the said Jesse Hoyt, became the owner and entitled to the possession of all the assets, securities, judgments, and property

covered by the first abovementioned deed or instrument in writing, and particularly set forth and specified in the schedule therein mentioned, and thereby became, and now am the owner of, and entitled to sue for, recover, collect, and receive all debts, claims, and demands, which at the time of the appointment of the said receivers, the said Morris Canal and Banking Company had, or which the said receivers of such had or claimed, against George Griswold, of the city of New York.

And whereas, also sundry judgments being the judgments described in the instrument in writing, next hereinafter set forth, were at the several times, and in the manner herein mentioned, severally recorded by Abraham Richards and David Selden, against the said The Morris Canal and Banking Company; which judgments were, on the seventeenth day of December, eighteen hundred and forty-four, duly sold, conveyed, assigned and set over to the said Skeffington Sanxay, for the benefit, and on account of the undersigned Jesse Hoyt, by the said Richards and Selden, by their deed or instrument in writing, duly executed by them, of which the following is a copy:

Know all men by these presents, that whereas, we, the undersigned Abraham Richards and David Selden, heretofore recovered several judgments, in the States of New York and New Jersey, against the Morris Canal and Banking Company, that is to say—

First. A judgment in the Supreme Court of the State of New York, on or about the twelfth day of May, in the year one thousand eight hundred and forty-one, for thirty-eight thousand three hundred and sixty-four dollars and sixty-five cents of debt, and two hundred and sixty-six dollars and sixty-five cents, damages and costs.

Secondly. A judgment in the Supreme Court of the State of New Jersey (in an action on the first mentioned judgment), on or about the seventh day of September, one thousand eight hundred and forty-one, for thirty-eight thousand six hundred and thirty-one dollars and thirty-six cents debt; eight hundred and sixty-three dollars and eighty-five cents damages; and thirty-four dollars and thirty-four cents costs.

Thirdly. A judgment in the Circuit Court of Hudson County, in the State of New Jersey (in an action on a bond), on or about the twenty-eighth day of December, one thousand eight hundred and forty-one, for fifteen thousand dollars debt, sixteen hundred and eighty-three dollars and thirty-three cents damages, and forty-four dollars and fifty-three cents costs.

Fourthly. A judgment in the Supreme Court of the State of New York (in an action on the first mentioned judgment, and the said bond), on or about the first day of April, one thousand eight hundred and forty-two, for fifty-six thousand nine hundred and sixty-four dollars and twenty-seven cents debt, and nine hundred and ninety-five dollars and forty-six cents damages and costs. And whereas,

Henry Yates, Thomas G. Talmage, and William Curtis Noyes also recovered a judgment against the Morris Canal and Banking Company, in the Supreme Court of the State of New Jersey, on or about the seventh day of September, one thousand eight hundred and forty-one, for ten thousand dollars debt, twelve hundred and eighteen dollars and two cents damages, and twenty-seven dollars and seventeen cents costs; which last-mentioned judgment was assigned by the plaintiff therein, to the said David Selden, on or about the seventh day of March, one thousand eight hundred and forty-three. And whereas, William S. Nichols also recovered a judgment against the Morris Canal and Banking Company, in the Supreme Court of the State of New Jersey, on or about the twelfth day of November, one thousand eight hundred and forty-one, for five hundred and forty-three dollars and eighty-four cents, damages and costs; which last-mentioned judgment was assigned by the plaintiff therein, to the said David Selden, on or about the day of one thousand eight hundred and forty And whereas, writs of execution were issued in the States of New York and New Jersey, upon the abovementioned six judgments, or some of them, by virtue whereof certain real and personal estate, and property of the defendants, was levied upon and sold, and the proceeds of the sales thereof applied in part satisfaction of the said judgments, or some of them. And whereas, the said Abraham Richards and David Selden, or persons deriving title through them, or one of them, are owners of the house and lot, known as No. 45 (forty-five) William Street, in the city of New York, now occupied, in part, by the Leather Manufacturers' Bank, of certain real estate in Orange County, and in New Jersey, are in part derived from, or acquired under the said judgments, or some of them. Now know ye, that we, the said Abraham Richards and David Selden, do, for the value received to our satisfaction, hereby set over unto Skeffington Sanxay, of the city of New York, attorney at law, the said six judgments, and each and every of them, and all moneys now remaining due thereon, and that may be had or obtained by means thereof, or on any proceedings to be had thereupon. And we do hereby constitute and appoint the said Skeffington Sanxay and his assigns, to be our true and lawful attorney and attorneys, irrevocable with power of substitution and revocation, for the use, and at the proper costs, charges, and risk of the said Skeffington Sanxay, his executors, administrators, and assigns, to ask, demand, have, and receive, and to sue out executions and take all lawful ways for the recovery of the moneys now remaining due, or which shall become due on the said judgments, and to acknowledge satisfaction, or discharge the same; and attorneys, one or more under him, for the purposes aforesaid, to make and substitute, and at pleasure to revoke, we hereby ratifying and confirming all that the said attorney or substitute, shall lawfully do in the premises. And we, the said Abraham Richards and David

Selden, do covenant with the said Skeffington Sanxay, his administrators and assigns, that we, or either of us, will not collect or receive the moneys now remaining due on the said judgments, or any part thereof; nor release or discharge the said judgments, or any of them, but will own, and allow all legal proceedings thereon; the said Skeffington Sanxay, his executors, administrators, and assigns, saving us, the said Abraham Richards and David Selden, and our executors and administrators, harmless of, and from any costs in the premises. Provided, however, and this assignment is upon the express condition, that nothing herein contained shall prevent the said David Selden, his heirs, or any persons deriving title from or under him or them, from having the use and benefit of the said judgments, or any of them, as far as may be necessary or useful for the support and protection of his or their title, to the said house and lot in William Street, in the city of New York, and real estate in Orange County, and in New Jersey; but that he and they may, for that purpose, avail himself and themselves of the said judgments and sue out executions, and take other lawful proceedings thereon, as fully and effectually, as if these presents had not been made.

In witness whereof, the said Abraham Richards and David Selden have hereunto set their hands and seals, this seventeenth day of December, one thousand eight hundred and forty-four.

A. RICHARDS. [L. S.]
DAVID SELDEN. [L. S.]

Sealed and delivered in the presence of
ANDREW S. GARR,
JOHN VERMILY.

And whereas, the said Skeffington Sanxay did, on the nineteenth day of December, eighteen hundred and forty-six, at the foot of the said last mentioned instrument, duly executed under his hand and seal, and delivered to me, the said Jesse Hoyt, his deed or instrument in writing, of which the following is a copy.

For and in consideration of one dollar, to me duly paid, I hereby assign, transfer, and set over to Jesse Hoyt, of the city of New York, the judgments mentioned in the foregoing instrument, and all sums of money due, and to grow due thereon, and all my right, title, and interest therein.

Given under my hand and seal, the nineteenth day of December, A. D. 1846.

SKEFFINGTON SANXAY, [L. S.]

Whereby, I, the said Jesse Hoyt, became and still am the owner of each and all such judgments, and entitled to recover and receive the moneys due, and to grow due thereon. And whereas also, at the time of appointment of the said receivers of the assets and property of the said the Morris Canal and Banking Company, the said last

mentioned Company, was justly indebted to the State of Indiana, in the sum of two millions, four hundred and ninety-two thousand, nine hundred and eleven dollars, and one cent. And whereas, a claim of the said indebtedness and the payment thereof, was, on the 21st day of October, eighteen hundred and forty-two, made and presented to the said receivers by the said the State of Indiana, acting by its agent and duly constituted attorney, Michael G. Bright: and whereas, the said claim was admitted and allowed, by the said receivers, who thereupon duly executed and delivered to the said Bright, for, and as the agent of the said State of Indiana, their certificate, in writing, in the words and figures following:

This is to certify that M. G. Bright, Esq., agent of the State of Indiana, hath this day presented to Elias D. B. Ogden, Stephen P. Brittan, and Alexander C. W. Pennington, receivers for the creditors and stockholders of the Morris Canal and Banking Company, a claim or demand against the said Morris Canal and Banking Company, amounting to the sum of two millions five hundred and thirty-six thousand six hundred and eleven dollars and seventy-two cents, and consisting of claims for bonds or stocks of said State, and interest thereon to February 1st, 1842, subject to the credit of forty-three thousand and seven hundred dollars and seventy-one cents, as per account furnished by him this day to us, to whom or to whose order and the production of this certificate will be payable such dividends as shall be directed to be paid to Indiana on the same, by the Chancellor of the State of New Jersey.

(Signed) ELIAS D. B. OGDEN,
S. P. BRITTAN,
Receivers, &c.

Jersey City, New Jersey, October 21st, 1832.

And whereas, the said State of Indiana, acting by its said agents, and duly constituted attorney for that purpose, the said Michael G. Bright, afterwards, for a valuable consideration, sold the same claim to me, the said Jesse Hoyt, and agreed to assign and convey the same, and then duly indorsed upon the said last mentioned certificate, or instrument, a direction and assignment in writing, expressing therein that the same was given and executed for value received, whereby the said State of Indiana, duly assigned the same to me, the said Jesse Hoyt, and directed and informed the said receivers to pay the indebtedness mentioned in the said certificate, to me the said Jesse Hoyt, and to my assigns, and authorized me and my assigns to collect and receive the same, which said assignment is now in full force and effect, and the said claim is now the property of me, the said Jesse Hoyt.

And whereas, also, on or about the twelfth day of December, eighteen hundred and forty-six, a petition was presented to the said

Court of Chancery of the State of New Jersey, by the said Skeffington Sanxay, of which the following is a copy.

In Chancery of New Jersey.

ABRAHAM RICHARDS AND DAVID SELDEN, *vs.* THE MORRIS CANAL AND BANKING COMPANY.	The Petition of Skeffington Sanxay to The Chancellor of the State of New Jersey.

Your petitioner, Skeffington Sanxay, of the city of New York, represents—

That in the beginning of this present year, 1846, he made an offer to the receivers of the said Morris Canal and Banking Company for all the assets remaining in the hands or under the control of said receivers late belonging to the said Morris Canal and Banking Company, which said offer was presented or reported to your Honor for action thereon, and in consideration thereof, an order was made referring the same to Henry A. Ford, Esq., one of the Masters of said Court, to report his opinion on such offer, and at a subsequent day the report of said Henry A. Ford was presented, to which was annexed a schedule purporting to contain a list of the said assets of the said Morris Canal and Banking Company then in the hands or under the control of said receivers, and upon deliberation then of your Honor was pleased to make an order in effect that the said receivers should assign the said assets mentioned in said report and schedule thereto annexed to your petitioner, and accordingly the said receivers, on or about the 16th day of May last past, did execute an assignment of said assets referring to said schedules attached to the said report of said Henry A. Ford. That your petitioner has not had the opportunity to examine said schedules and compare the same with the books and papers of said company, for the purpose of ascertaining whether all of said assets and the rights of action of said company, or said receivers, may have been included in said report and schedules and said assignment, and as said receivers have given notice that they have closed the business of their trust, and will exhibit their final report to your honor on the third Tuesday of December instant, and apply for an order to discharge them from said trust, and for the better protection of your petitioner, and for the reason that some errors may have been made in said schedules attached to said report, and that some right of action of said company represented by said receivers might have been included therein, your petitioner prays for an order declaring that said order of said eleventh of May, 1846, was intended to convey, and does by virtue thereof convey, to your petitioner all the rights of said receivers as they existed on the said eleventh day of May, 1846, in said assets or rights of action, whether or not the same were mentioned or set forth in the said schedule at-

tached to said report, or the order and assignment founded thereon, and your petitioner will ever pray.

December 1, 1846.

(Signed) SKEFFINGTON SANXAY.

Together with an instrument in writing, duly executed upon the foot of the said petition, by the said receivers, in the words and figures following, that is to say:

"The undersigned, receivers of the Morris Canal and Banking Company, admit the correctness of the statement in the foregoing petition of Skeffington Sanxay.

ELIAS D. B. OGDEN,
S. P. BRITTAN,
A. C. M. PENNINGTON."

And whereas, I allege each and all the facts set forth and stated in the said petition, are and were true.

And whereas, I, the said Jesse Hoyt, did in or about the month of October, eighteen hundred and fifty, make and file my complaint in the Superior Court of the City of New York, against John Cryder, James Morrison, William S. Wetmore, George Griswold, and Stephen Whitney, as a cross-complaint, in an action then pending in the said Court, in which John Cryder and William S. Wetmore were plaintiffs, and George Griswold, the Morris Canal and Banking Company, and Jesse Hoyt, were the defendants; and caused copies of the said cross-complaint to be served upon the said John Cryder, William S. Wetmore, George Griswold, and Stephen Whitney, respectfully; and whereas, in and by the said complaint, I, the said Jesse Hoyt, claimed to recover from the said (George Griswold) a large sum of money, and from him, and others of the said defendants therein named, other large sums of money alleged therein to be due, and owing by and from him, and them to me, by virtue of my said purchases and ownership of the said assets, bonds, judgments, claims, and property hereinbefore mentioned, and also by virtue of the claims and demands as therein stated, as will more fully appear, on reference to a copy of the said complaint, which I have this day indorsed with the following words, "This is the cross-complaint mentioned in a release, this day executed by me to George Griswold." Signed with my name, and placed in the hands of the said (George Griswold). And whereas, the said action so brought in the said Superior Court, by the said Cryder and Wetmore, against the said George Griswold, the Morris Canal and Banking Company, and myself, and the said cross action so brought by me, against the said Cryder, Morrison, Wetmore, Griswold, and Whitney, are yet undetermined, and are still pending in the said Superior Court. And whereas, in order to avoid further litigation in the matter, it has in view of the premises, and for the consideration hereinafter mentioned, been, and is mutually under-

stood and agreed between the said George Griswold and myself, that all the matters involved in said controversy, and everything growing out of the same, or connected therewith, and all claims and demands of every name and nature, which I now have, or may hereafter have, against the said George Griswold, or to which I am, or may be entitled, whether under the said bonds, judgments, claims, or assignments, or otherwise, shall be compromised, adjusted, liquidated, discharged, released, and settled, and the said Griswold forever discharged and released therefrom.

Now, therefore, know all men by these presents, that in consideration of the premises, and of the sum of fifteen thousand dollars, to me in hand paid, by the said George Griswold, the receipt of which is hereby acknowledged, I, the said Jesse Hoyt, have remised, released, and forever discharged; and by these presents, do, for myself, my heirs, executors, administrators, and assigns, remise, release, and forever discharge the said George Griswold, his heirs, executors, and administrators, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, deeds, sums of money, claims, and demands whatsoever, in law or in equity, which I ever had, or now have, or which I, or my heirs, executors, administrators, or assigns hereafter can, shall, or may have, by reason of all or any of the claims, demands or matters hereinbefore recited or referred to, and each of them, and also for and by reason of any matter, cause, or thing whatsoever, from the beginning of the world, to the date of these presents.

In witness whereof, I have hereunto set my hand and seal, this 17th day of November, one thousand eight hundred and fifty-three.

J. HOYT. [L. S.]

In the presence of
THOMAS J. POWERS.

"*State of New York,*
"*City and County of New York, ss.*

"On this nineteenth day of November, eighteen hundred and fifty-three, personally appeared before me, Thomas J. Powers, known to me to be the subscribing witness to the above, and foregoing release, who, being by me duly sworn, deposed and said, that he resided in the city of New York; that he saw Jesse Hoyt, who was known to him to be the individual described in, and who executed the said release, sign and execute the same; and that he, deponent, became the subscribing witness to the execution thereof, at his request.

"G. E. BALDWIN,
"*Commissioner of Deeds.*"

And the said defendant, Henry Shelden, proved and put in evidence, that part of the cross-bill, in the aforesaid release mentioned

and referred to, which is contained in folios 287 and 288, being a recital or statement of the contents of the original bill in said suit, wherein it was charged in the words following, that is to say: "That large sales, conveyances, assignments, and transfers of the estate, effects, choses in action, goods, chattels, rights and credits, lands and tenements of the said Company" (the said Morris Canal and Banking Company, meaning), "were made to the said George Griswold, in contemplation of the insolvency of the said Company; and also, after its actual insolvency, and after it had suspended its ordinary business, for want of funds to carry on the same; and among other large amounts of promissory notes, bills receivable, bills of exchange, and stocks, were so sold, conveyed, assigned, or transferred to the said George Griswold, in fraud of the rights and claims of the plaintiffs, and the other bond-holders and creditors of the said Company." And also, that part of said cross-bill, which is contained in folios 654 to 657 inclusive, in the words following, that is to say: "And the said plaintiff further says and charges, that all the statements in said complaint of said Cryder and Wetmore (the aforesaid original bill, meaning), of and concerning the said George Griswold, and hereinbefore referred to, as being a part of said complaint, and particularly concerning;" "all bills receivable, and other assets and property of said Canal Company, alleged to have come to the hands of said George Griswold, the said plaintiff believes, and without repetition thereof, charges to be true, and he claims the like benefit and advantage therefrom, the same as though he had again repeated said statements and charges relating thereto; and said plaintiff hereby prays relief in the premises hereby referred to, and as fully as he would have been entitled, if the statements and charges had been first made by him; the plaintiff hereby denying, as the said plaintiff does deny, that said Cryder and Wetmore have now, or ever had any right to call upon said George Griswold, to account in the said premises; but which said right is vested solely in him, the said plaintiff, for the reasons hereinbefore stated, either as the representative and assignee of said receivers, or as creditor of said Canal Company, in the various attitudes, as also hereinbefore stated, and as such representative or assignee, or such creditor he, the said plaintiff, charges the said George Griswold, is bound to account to him, the said plaintiff." And also, that part of said cross-bill, which is contained in folios 729 and 730, containing a part of the prayer thereof, in the words following, that is to say: "And that the said George Griswold may be compelled to account for and pay to said plaintiff for all bills receivable, and other assets of the said Company, which have come to his hands."

Continuance of Defendants' Exhibits.

Exhibit, from said book of minutes, on page 312; the proceedings of the Directors, of 5 Nov., 1840. (See proof, page 29, fol. 110, 111.)

At a meeting of the Board of Directors, held at Jersey City, 5th Nov , 1840 :

Present,—The President, the Vice-President, Mr. Ryerson, Mr. Bacot, Mr. J. W. Post.

The minutes of the last meeting were read and approved.

The President stated that he had every reason to believe that arrangements would be made in conjunction with the Lehigh Company for deriving trade from the Wyoming Valley. That we had nearly concluded upon terms of settlement with the State of Michigan, so as to give us a long period with payment of money, and a subsequent liquidation in gradual instalments, and that we had also a prospect of making an adjustment for the interest on the English bonds for the next two or three instalments.

On motion, the Board adjourned.

I certify that the foregoing is a true copy from the minutes contained in book marked D., referred to in the testimony.

ABRAHAM UNDERHILL,
Referee.

Exhibit, in the book of minutes of the Morris Canal and Banking Company, labelled on back 226 D, at pages 313–314. (See Testimony, page 29, fol. 110.)

At a regular meeting of the Board, held at Jersey City, Thursday, the 31st December, 1840, were present—

THE PRESIDENT,
THE VICE-PRESIDENT,
MR. KINNEY,
MR. BACOT,
MR. SOUTHARD.

The agreement with the State of Michigan of 9th Dec., 1840, was read, and the following resolution was unanimously adopted by the Board :

Resolved, That the agreement made by the executive officers with the State of Michigan, and the accompanying papers in execution thereof, be and the same are hereby approved, and that the executive officers have power to comply in all respects with the provisions thereof.

The following resolution was unanimously adopted :

Resolved, That authority be and the same is hereby given to the executive officers to exchange the securities with the Fund Commissioners of the State of Indiana, under seal of the Company, or otherwise, and extend the payment of such as may be deemed for the interest of all parties to renew or extend ; but that the officers from time to time report the same, and as far as practicable, consult with the Board in relation thereto. The toll permits prepared under the resolution passed by the Board, 8th Oct., 1840, was submitted to

the Board, and it was resolved that the same be approved, but authority be given to the executive officers to issue the same in conformity with the resolution above referred to.

N. Y. Superior Court.

JESSE HOYT
v.
HENRY SHELDEN, Ex'r, &c., and others.

I certify that the foregoing is all the testimony taken before me, under the order of this court, of which the foregoing is a copy.
Dated March 7, 1856.

ABR'M UNDERHILL,
Referee.

And the said plaintiff proved and put in evidence that part of the said cross-complaint referred to in the aforesaid release contained in fol. 1 to 6 inclusive, which is in the following words:

"In the Superior Court of the City of New York."

"JESSE HOYT, Plaintiff,"
v.
"JOHN CRYDER, JAMES MORRISON, WILLIAM S. WHETMORE, GEORGE GRISWOLD, and STEPHEN WHITNEY, Defendants."
Cross Complaint of Plaintiff.

"*City and County of New York*, ss.

"Jesse Hoyt, plaintiff in the above entitled cause, complains, by way of cross-complaint, of John Cryder, William S. Wetmore, George Griswold, James Morrison, and Stephen Whitney, defendants, and respectfully shows to this court that on or about the day of June, in this present year of eighteen hundred and fifty, the said John Cryder and William S. Wetmore, commenced a suit in this court, by complaint, against the said George Griswold, the Morris Canal and Banking Company, and Jesse Hoyt, the above named plaintiff, setting forth or referring to the Acts of the Legislature of the State of New Jersey, of 31st December, 1824, entitled 'An Act to incorporate a Company to form an artificial navigation between the Passaic and Delaware Rivers,' which incorporation was to be known by the name of the Morris Canal and Banking Company, and various Acts passed by the same Legislature in addition to and amendatory of the said Act first above named, that is to say, another Act passed the day last aforesaid, that is to say, the 31st day of December, 1824; another passed the 26th day of January, 1828; another the 23d day of February, 1829; another the 29th day of

January, 1830; another the 10th day of March, 1832; another the 19th day of January, 1835; another the 5th day of March, 1836. Copies of which said Acts are hereto annexed, marked from A to H inclusive, the original of which said Acts respectively, properly verified, are ready to be produced and proven according to the practice of this court; and plaintiff craves the same be taken as part of this, his complaint."

"And the said complainant of said Cryder and Wetmore, further stated, upon information and belief, that the aforesaid Company was therefore duly organized under the aforesaid Act of Incorporation, and went into full operation, and that large amounts of capital stock were subscribed, and parts thereof paid in, and large amounts expended in procuring lands, and that after one million of dollars had been subscribed, towards the capital stock of the said Company, for the purpose of a canal, the said Company, under the clauses and provisions in the said first-mentioned Act, inserted for the purpose of inducing capitalists and others to subscribe for stock, and under the last-mentioned Act proceeded to increase the capital stock for the purpose of banking operations, to the extent of six hundred thousand dollars, under the conditions, limitations, and restrictions contained in the said Act."

"And also that part of said cross-complaint which is contained in fol. 312 to 318, inclusive, in the words following:

"And the plaintiffs further show, upon information and belief, that the holders of the said sterling bonds, and the other creditors of the said Morris Canal and Banking Company, chiefly reside out of this State, and it would be impracticable to make all the said bondholders, and the other creditors of said Company, parties to this action; that the question is one of common and general interest to all the bondholders; that the defendant, Jesse Hoyt, claims to be, and as the plaintiffs believe, has become in some way the assignee and holder of the judgments aforesaid, recovered by Abraham Richards and David Selden, and of certain other judgments or claims held by those persons or others, against said Company; and the said Jesse Hoyt has obtained the possession of various books, papers, and assets of the said Morris Canal and Banking Company, and claims some right to hold the same, and to enforce the claims aforesaid against the said George Griswold, but as the plaintiffs believe and insist, without possessing any such right, unless a mere creditor of the said Company, of which books, papers and assets, being within this State, and of which claim, of right, the plaintiffs demand a discovery; and the said complainant asked relief in the following words:

"Whereupon the plaintiffs demand the aid of this Honorable Court, in the premises, and that the said George Griswold may be compelled to account for and pay the sum of thirty-three thousand, three hundred and fifty-four dollars, for which the before-mentioned note was given by him on account of the said three hundred and forty

shares of stock, and withdrawn or taken by him as aforesaid, with interest from the maturity of such note; also, for the stock of the State of Michigan, taken and received by him, as hereinbefore stated, and agreed to be paid for by him, but for which he has not fully paid; also, the value of the real estate aforesaid, in the city of New York, conveyed to him by the said Henry Yates and Stephen Whitney, and their wives, as hereinbefore stated, and the rents and profits, and proceeds thereof received by him; and also the value of the real estate aforesaid, situate in Jersey City, and the rents and profits, and proceeds thereof received by him; and for all bills receivable, and other assets of the said Company which have come to his hands; and that the said George Griswold may also be held responsible for the losses which resulted from the abuses of trust, and of his situation as a director of the said Company hereinbefore mentioned, and that an account may be taken against the said George Griswold for all such abuses and wrong courses, for which he is responsible, as if the said Company, but for the same had sufficient assets to have paid the plaintiffs, and the other bondholders and *bona fide* creditors of the said Company the full amounts justly due to each."

"And that the plaintiffs may be paid out of the sums so payable by the said George Griswold, the full amount due them from the said Morris Canal and Banking Company, with interest and costs, or that they may have such other relief as may be just in the premises."

"And the said plaintiff, Jesse Hoyt, further says, that he has caused his appearance to be made to said complainit of said John Cryder and William S. Wetmore, and which said complaint purports to have been sworn to by the said John Cryder, on the 21st day of June, 1850, before Joseph Strong, a commissioner of deeds; and to which complaint the said plaintiff, Jesse Hoyt, craves leave, for greater certainty, to refer, and make at the proper time, the same a part of this, his complaint."

And also that part of said cross-complaint which is contained in fol. 724 to 732, inclusive, in the words following:

"Whereupon the said Jesse Hoyt demands the aid of this honorable Court in the premises, in this, to wit, that the said James Morrison and John Cryder, trading as aforesaid under the said firm of Morrison, Cryder & Co., may be compelled to account for and to pay to him, said plaintiff, the value, in the currency of the United States, of the sum of one hundred and fifty-four thousand nine hundred and twenty-eight pounds, sterling money of Great Britain, for that sum converted by them of the Indiana stock or bonds, funds and moneys, of the said Canal Company, as hereinbefore stated, and also for the value of the sum of eleven thousand four hundred and thirty-three pounds sterling, in same currency, applied by the said James Morrison and John Cryder, trading as aforesaid, of the funds and moneys of said Canal Company, in and towards the payment of interest on

January, 1830; another the 10th day of March, 1832; another the 19th day of January, 1835; another the 5th day of March, 1836. Copies of which said Acts are hereto annexed, marked from A to H inclusive, the original of which said Acts respectively, properly verified, are ready to be produced and proven according to the practice of this court; and plaintiff craves the same be taken as part of this, his complaint."

"And the said complainant of said Cryder and Wetmore, further stated, upon information and belief, that the aforesaid Company was therefore duly organized under the aforesaid Act of Incorporation, and went into full operation, and that large amounts of capital stock were subscribed, and parts thereof paid in, and large amounts expended in procuring lands, and that after one million of dollars had been subscribed, towards the capital stock of the said Company, for the purpose of a canal, the said Company, under the clauses and provisions in the said first-mentioned Act, inserted for the purpose of inducing capitalists and others to subscribe for stock, and under the last-mentioned Act proceeded to increase the capital stock for the purpose of banking operations, to the extent of six hundred thousand dollars, under the conditions, limitations, and restrictions contained in the said Act."

"And also that part of said cross-complaint which is contained in fol. 312 to 318, inclusive, in the words following:

"And the plaintiffs further show, upon information and belief, that the holders of the said sterling bonds, and the other creditors of the said Morris Canal and Banking Company, chiefly reside out of this State, and it would be impracticable to make all the said bondholders, and the other creditors of said Company, parties to this action; that the question is one of common and general interest to all the bondholders; that the defendant, Jesse Hoyt, claims to be, and as the plaintiffs believe, has become in some way the assignee and holder of the judgments aforesaid, recovered by Abraham Richards and David Selden, and of certain other judgments or claims held by those persons or others, against said Company; and the said Jesse Hoyt has obtained the possession of various books, papers, and assets of the said Morris Canal and Banking Company, and claims some right to hold the same, and to enforce the claims aforesaid against the said George Griswold, but as the plaintiffs believe and insist, without possessing any such right, unless a mere creditor of the said Company, of which books, papers and assets, being within this State, and of which claim, of right, the plaintiffs demand a discovery; and the said complainant asked relief in the following words:

"Whereupon the plaintiffs demand the aid of this Honorable Court, in the premises, and that the said George Griswold may be compelled to account for and pay the sum of thirty-three thousand, three hundred and fifty-four dollars, for which the before-mentioned note was given by him on account of the said three hundred and forty

shares of stock, and withdrawn or taken by him as aforesaid, with interest from the maturity of such note; also, for the stock of the State of Michigan, taken and received by him, as hereinbefore stated, and agreed to be paid for by him, but for which he has not fully paid; also, the value of the real estate aforesaid, in the city of New York, conveyed to him by the said Henry Yates and Stephen Whitney, and their wives, as hereinbefore stated, and the rents and profits, and proceeds thereof received by him; and also the value of the real estate aforesaid, situate in Jersey City, and the rents and profits, and proceeds thereof received by him; and for all bills receivable, and other assets of the said Company which have come to his hands; and that the said George Griswold may also be held responsible for the losses which resulted from the abuses of trust, and of his situation as a director of the said Company hereinbefore mentioned, and that an account may be taken against the said George Griswold for all such abuses and wrong courses, for which he is responsible, as if the said Company, but for the same had sufficient assets to have paid the plaintiffs, and the other bondholders and *bona fide* creditors of the said Company the full amounts justly due to each."

"And that the plaintiffs may be paid out of the sums so payable by the said George Griswold, the full amount due them from the said Morris Canal and Banking Company, with interest and costs, or that they may have such other relief as may be just in the premises."

"And the said plaintiff, Jesse Hoyt, further says, that he has caused his appearance to be made to said complainit of said John Cryder and William S. Wetmore, and which said complaint purports to have been sworn to by the said John Cryder, on the 21st day of June, 1850, before Joseph Strong, a commissioner of deeds; and to which complaint the said plaintiff, Jesse Hoyt, craves leave, for greater certainty, to refer, and make at the proper time, the same a part of this, his complaint."

And also that part of said cross-complaint which is contained in fol. 724 to 732, inclusive, in the words following:

"Whereupon the said Jesse Hoyt demands the aid of this honorable Court in the premises, in this, to wit, that the said James Morrison and John Cryder, trading as aforesaid under the said firm of Morrison, Cryder & Co., may be compelled to account for and to pay to him, said plaintiff, the value, in the currency of the United States, of the sum of one hundred and fifty-four thousand nine hundred and twenty-eight pounds, sterling money of Great Britain, for that sum converted by them of the Indiana stock or bonds, funds and moneys, of the said Canal Company, as hereinbefore stated, and also for the value of the sum of eleven thousand four hundred and thirty-three pounds sterling, in same currency, applied by the said James Morrison and John Cryder, trading as aforesaid, of the funds and moneys of said Canal Company, in and towards the payment of interest on

said sterling bonds, so called, as also hereinbefore stated, and also for Indiana stock or bonds taken by said James Morrison and John Cryder, trading as aforesaid, yielding to them the sum of one hundred thousand dollars, as also hereinbefore stated, and interest on the said several sums from the time of said conversion or misapplication as aforesaid.

"And in the event of said James Morrison and John Cryder, trading as aforesaid under the firm of Morrison, Cryder & Co., not being liable to said plaintiff, as he charges and insists as they are, hereinbefore stated, then he, the said plaintiff, demands the aid of this honorable Court to compel the said George Griswold and Stephen Whitney to account for and pay to him, said plaintiff, the value, in the currency of the United States, of the said sum of one hundred and fifty-four thousand nine hundred and twenty-eight pounds sterling, for so much money wrongfully taken and illegally misapplied, and which was of said Morris Canal and Banking Company, put into the hands of said Morris, Cryder & Co., as hereinbefore stated, and misapplied, as also before stated, and also for the sum of four hundred thousand dollars, also wrongfully taken and illegally misapplied, of the funds of said Canal Company, on and towards the payment of the interest on said sterling bonds, so called, as hereinbefore stated, and also the interest on the said one hundred and fifty-four thousand nine hundred and twenty-eight pounds sterling, and said sum of four hundred thousand dollars, from the day the same was so taken and misapplied, with interest thereon, and also for the other and several breaches of trust hereinbefore mentioned.

"And that the said George Griswold may be compelled to account for and pay to said plaintiff the sum of thirty-three thousand three hundred and fifty-four dollars, for which the before mentioned note was given by him on account of the said 340 shares of stock, and withdrawn or taken by him as aforesaid, with interest from the maturity of said note; also for the stock of the State of Michigan taken and received by him, as also hereinbefore stated, and agreed to be paid for by him, but for which he has not fully paid; and also the value of the real estate aforesaid, situate at Jersey City, and the rents, profits, and proceeds thereof received, or which might have been received, by him, and for all bills receivable, and other assets of the said Company which have come to his hands, and that the said George Griswold may also be held responsible for the losses which resulted from the abuses of trust of his situation as a director of the said Canal Company hereinbefore mentioned, and that an account may be taken against him, the said George Griswold, for all such abuses and wrong causes, particularly stated in said complaint of said Cryder and Wetmore; and the statement thereof, the said plaintiff hereby adopts, so far as the same is true, and for the consequences of which he, the said George Griswold, is responsible.

"And further, that said plaintiff may have an order from this

honorable Court, staying the proceedings in the said suit of said Cryder and Wetmore, and against him, the said plaintiff, in this complaint, so far as relates to any of the assets, property, or effects, that were of said Canal Company."

The cause afterwards came on to be tried at a special term, before Murray Hoffman, one of the justices of the Court, without a jury, and thereupon the testimony taken before the referee, and hereinbefore stated, was produced and read in evidence. And further, the defendant proved, and put in evidence, Rule 1 of the By-Laws of the Morris Canal and Banking Company, which was as follows: "There shall be a stated meeting of the directors, until otherwise ordered, on Thursday in each week, at the banking house in Jersey City.

"The president may call a special meeting whenever he may think it necessary; he shall also call a special meeting whenever any three of the directors shall request that he shall do so. The cashier shall give due notice of all special meetings to the president and directors. Whenever any three of the directors shall request in writing that a meeting of the directors be called, the cashier shall give notice of such special meeting to the president and directors, without consulting the president. Five directors, of whom the president shall always be one, or, in his absence, seven directors, shall form a quorum for the transaction of the ordinary business of the Company."

And the plaintiff on his part proved, and put in evidence, Rule 31 of said By-Laws, which was as follows: "No officer, agent, or director of the Company, without being empowered by the board, shall make any engagement, promise, or agreement of any kind whatsoever, purporting to bind the Company, or by which its stock, funds, or credit may in anywise be affected." And the said plaintiff also proved, and put in evidence, Rules 2, 3, 4, 5, 6, 7, 8, 16, 17, 19, and 22, of said By-Laws, which are as follows:

"Rule 2. In the intervals between the stated meetings, the business and affairs of the Company shall be transacted and managed by the standing and special committees, who shall weekly, at each stated meeting, make a report of their proceedings, for the approbation and confirmation of the board.

"Rule 3. The bank shall be kept open for the transaction of business from nine o'clock in the morning until three o'clock in the afternoon, every day in the year, except Sundays, Christmas day, the first of January, and the fourth of July.

"Rule 4. The bank shall take charge of the cash of all such persons as shall choose to place it there, free of expense, and shall keep it subject to the order of the depositor, payable at sight; and shall also receive special deposits of ingots of gold, bars of silver, wrought plate, and other valuable articles of small bulk, for safe keeping, at the risk of the depositor; and shall also receive any money which may be deposited with or loaned to the Company, under its trust or

other powers, upon such terms as may be agreed upon with the parties respectively.

"Rule 5. All bills and notes offered for discount shall be delivered into bank on the day preceding the stated meeting in each week, and laid before the board of directors by the cashier, at their meeting, on the succeeding day, together with a statement of the funds and situation of the bank, showing particularly the cash on hand, amount on deposit, bills in circulation, and amount received for discounts or interest, on which days the discount shall be settled, and such as shall be admitted shall be passed to the credit of the applicants, on the day on which they are discounted, and may be drawn for at any time thereafter, and the notes or bills not discounted, shall be returned at any time after one o'clock on the same day.

"Rule 6. Discounts shall not be made upon personal security without two responsible names, the firm of a house being considered as one name only; but if stock of this bank, or some other company in good credit, of such other property as shall be approved by the board, be deposited and pledged to an amount sufficient to secure the payment, with all damages, one responsible name may be taken. But no accommodation note, *i. e.* a note, the proceeds of which are to be placed to the credit of the drawer, shall be discounted, but upon an express agreement to pay the same at maturity, nor then unless its payment is secured by a deposit of the stock of some bank or company of good credit, or such other security as shall be approved by the board, together with an express authority to the bank to sell the deposit in case of non-payment, at any time after the note shall become due. And no note shall be discounted or renewed, nor any money but by the cashier, without the special order of the board, or of the president and the finance committee.

"Rule 7. On each application for discount, every director who may be present shall be held to give his opinion for or against the same. And no discount shall be made without the consent of three-fourths of the directors present, and all notes and bills discounted shall be entered in a book, to be called the credit book, in such manner as to discover to the board at one view, on each discount day, the amount which any person is discounter, or is indebted to the bank, either as payer or indorser.

"Rule 8. On every discount day, the name of every person who shall have overdrawn the bank since the last discount day, shall be reported to the board, and no person while he remains an over drawer, shall have any note or bill discounted at this bank, and in no instance will this bank give a release or discharge to any debtor where the debt arises from an overdraft. And every officer who shall knowingly suffer an overdraft to be made on the bank without communicating it to the president or cashier, shall be dismissed from the service of the bank.

"Rule 16. All vacancies happening in any one of the classes into

which the directors are divided, by death, resignation, or otherwise, shall be supplied by a vote of the board, and the person or persons elected to supply such vacancy shall serve for the same length of time as he or they who occasioned such vacancy or vacancies, might have served. All elections to supply such vacancies shall be by ballot, and no person shall be chosen who shall not have been nominated at a stated meeting at least two weeks preceding, and the votes of a majority of the whole number of directors, shall be requisite to a choice.

"Rule 17. The officers of the Company shall be appointed by the board, and shall be a president, a cashier, and assistant cashier. The board may also appoint such other officers, clerks, agents, and servants, as from time to time they may think necessary.

"Rule 19. The president shall preside at all meetings of the Board when present, and shall be the judge of, and preserve order according to the rules generally observed in deliberative bodies, and those hereinafter prescribed. His decisions shall be immediately submitted to, unless two members require an appeal to the Board. He shall name all committees, unless the Board shall otherwise determine. When he shall be absent from the city, or unable to attend to the meetings of the Board of Directors, or at the office of the Company, it shall be his duty, by letter, to appoint some one of the Directors as president *pro tempore*, to act in his absence; who, during such absence, shall have all the powers, and discharge all the duties of the president; but no president *pro tempore*, shall be entitled to any compensation. The president shall have the general superintendence and direction of the affairs of the Company, as well in relation to the canal, as to banking. He shall see that the provisions of the charter, the by-laws, and the resolutions of the Board, all duly executed; he shall be, ex officio, a member of all committees, in addition to the other members; but it shall not be incumbent on him to attend any meeting of a committee, unless he should be especially requested, by the chairman of the committee, or he should think it advisable to attend. He shall, from time to time, give to the Board such information as to the officers of the Company, as he may think may be useful; and he may propose to the Board, such measures as he may think it would be advisable for the Company to adopt. In all cases, where the duties of the officers, agents, or servants of the Company are not specially prescribed by a resolution of the Board, or by the by-laws, they shall obey the orders or instructions of the president. All bank bills shall be signed by the president, and countersigned by the cashier; but there shall be no new emission of bank bills, nor shall any be signed, otherwise than in pursuance of and conformably to a resolution of the directors, to be passed at a stated meeting; at which shall be present, the president, and at least eight of the directors, which resolution shall be entered upon the minutes. There shall be a register of all bank bills signed by the president; which register

shall refer to the resolution by dates, by which the issuing of the bills is authorized; and it shall specify the number, date, and amount of each bill, and to whom payable. This register shall be prepared by the cashier, and handed by him to the president, with the bills to be signed by him; it shall be kept in the possession of the president, and at the next meeting of the Board of Directors, after there shall have been an issue of the new bills, the register shall be exhibitod to the Board by the president. He shall also have the custody of the seal of the corporation, which he shall cause to be affixed to all such instruments as the directors shall order."

"Rule 22. In the election of cashier, or assistant cashier, the ballots shall be first taken for all the candidates; and if no one shall have a majority of the votes of all the directors, then the candidates having the highest number, shall be voted for again; and if no one shall be elected, the ballots shall be then taken on the two highest."

And the said Justice afterwards, on the 7th day of February, 1857, made and filed his decision in the case as follows, viz.:

Superior Court.

"JESSE HOYT,
"*against*
"HENRY SHELDEN, Executor, &c., of ABRAHAM G. THOMPSON, deceased, impleaded with others."

"I decide in this cause,

"1. That the plaintiff is entitled to recover from the defendant, Henry Shelden, the executor of the estate of Abraham G. Thompson, deceased, the amount of the bonds of the Long Island Railroad Company, which has been paid by such Company to the said Thompson, in his lifetime, or to his said executor since; and also, the amount so paid upon the twenty other bonds of such Company, for $228 88, each with lawful interest.

"2. That in case the said sum of money, so as above to be paid by the executors of the said Abraham G. Thompson, shall not be recovered out of his estate; then that the defendants, The Long Island Railroad Company, do pay and discharge the same, with lawful interest, or such part of the same as shall not be paid by or out of the estate of the said Thompson.

"3. That the mortgages given to the said Abraham G. Thompson, to secure the aforesaid bonds, amounting in all to forty thousand dollars; and all right, title, and interest therein, belonging to and equitably vest in the said plaintiff, and that he is entitled to an assignment and delivery of the same.

"4. That the said Henry Shelden, executor, as aforesaid, do deliver unto the said plaintiff, twenty bonds of one thousand dollars each, made by such Railroad Company, to said Thompson or bearer,

dated the 1st of May, 1843; ten of which were made payable the 1st of May, 1849; the other ten, the 1st of May, 1850, with the coupons thereto attached for interest, and also twenty other bonds of such Company, for $228 88 each, dated the said 1st of May, 1843, and payable with interest; and in default of such delivery, that he pay the amount due thereupon, out of the assets of such estate.

"5. That the whole amount of the bonds last-mentioned, having become due and payable, the said plaintiff is entitled to a judgment against the said The Long Island Railroad Company, for the amount thereof, with lawful interest.

"6. That the plaintiff recover his costs against the estate of the said Abraham G. Thompson, and that all the other parties to this suit bear their own costs respectively."

To which decision, and every part thereof, the defendant excepted, and afterwards, and within ten days after notice in writing of the judgment in the action, made and filed with the clerk of the Court, exceptions in writing to the matters of law, arising upon said trial and involved in the said decision, pursuant to section 268, of the Code of Procedure; and caused a copy of said exceptions, with notice that it was such copy, to be served on the plaintiff's attorney; and which said exceptions in writing, were in the words and figures following, viz.:

Superior Court.

JESSE HOYT,
agst.
HENRY SHELDEN, executor, &c., of Abraham G. Thompson, deceased, impleaded with others.

Please take notice, that the defendant, Henry Shelden, executor, &c., excepts to the decision of the Honorable Murray Hoffman, one of the justices of this court, before whom this action was tried, at a special term, without a jury, upon each and every of the grounds following, viz.:

First. The said Justice erred in ruling and deciding, as a matter of law, that the powers conferred by the charter or act of incorporation of the Morris Canal and Banking Company, upon the Board of Directors of the said corporation could only be exercised by a majority of the whole number of Directors prescribed in said charter; and to that ruling and decision the counsel for the defendants excepts.

Second. The said Justice erred in ruling and deciding that the By-Laws of said Morris Canal and Banking Company, as proved, did not authorize or empower any less number than a majority of the whole directors prescribed by said charter to act as a Board of Directors in transferring the securities and debt against the Long Island Railroad Company, in the pleadings mentioned, to the State of Michigan, for the payment of the debt due from said Morris Canal

and Banking Company to said State of Michigan; and to that ruling and decision the counsel for the defendant excepts.

Third. The said Justice erred in ruling and deciding that the assignment and transfer of the said securities and debt in question, by the president and cashier of the Morris Canal and Banking Company, was made without the authority of the Board of Directors of that corporation; and to the last-mentioned ruling and decision of the Judge, the counsel for the defendant excepts.

Fourth. The said Justice erred in omitting to rule and decide that the assignment and transfer of said securities by the said president and cashier was made with the authority of the said Board of Directors; and to the said omission to rule and decide, the counsel for the defendant excepts.

Fifth. The said Justice erred in ruling and deciding that the signatures of the president and cashier of said Morris Canal and Banking Company, together with the seal of that corporation, affixed to the assignment of the said securities from the said Morris Canal and Banking Company to the said State of Michigan, were not sufficient *prima facie* evidence of the legality and validity of said transfer and assignment; and to the last-mentioned ruling and decision of the Judge, the counsel for the defendant excepts.

Sixth. The said Justice erred in omitting to decide that the signatures of the president and cashier of said Morris Canal and Banking Company, together with the seal of that corporation, affixed to the assignment of the said securities of the said Morris Canal and Banking Company to the said State of Michigan, were sufficient *prima facie* evidence of the legality and validity of said transfer and assignment; and to the last-mentioned omission to rule and decide, the counsel for the defendants excepts.

Seventh. The said Justice erred in ruling and deciding that there was sufficient evidence to overcome or destroy the presumption, which the said assignment so executed by the signatures of the president and cashier and the seal of the corporation bore upon its face, that it was executed by competent authority; and to the last-mentioned ruling and decision of the Judge, the counsel for the defendant excepts.

Eighth. The said Justice erred in ruling and deciding that the said president and cashier had not implied authority, arising from the knowledge and acquiescence of the said Board of Directors, to execute said assignment and transfer; and to the last-mentioned ruling and decision of the Judge, the counsel for the defendant excepts.

Ninth. The said Justice erred in omitting to rule and decide that the said president and cashier had implied authority, arising from the knowledge and acquiescence of the said Board of Directors, and from other facts and circumstances proved in the case, to execute said assignment and transfer; and to the last-mentioned omission to rule and decide, the counsel for the defendant excepts.

Tenth. The said Justice erred in ruling and deciding that resolutions and minutes were the only proper evidence of the corporate acts of the Board of Directors giving authority to said president and cashier to execute the said assignment of said securities to the State of Michigan; and to the last-mentioned ruling and decision of the Judge, the counsel for the defendant excepts.

Eleventh. The said Justice erred in ruling and deciding that it was incumbent on the defendant to show affirmatively that said president and cashier had authority from the Board of Directors of said corporation to transfer said securities, after the transfer under the signatures of said president and cashier and the corporate seal had been proved by the defendant, and no proof had been made on the part of the plaintiff that said president and cashier had no such authority; and that in absence of such affirmative proof on the part of the defendant, the transfer by said president and cashier was to be deemed and adjudged a nullity; and to the last-mentioned ruling and decision of the Judge, the counsel for the defendant excepts.

Twelfth. The said Justice erred in ruling and deciding that the book D, of minutes, from which the defendant put in evidence the proceedings of one meeting of the directors of the said Morris Canal and Banking Company, on the 5th of November, 1840, and another on the 31st of December, 1840, was not evidence that such meetings and proceedings were meetings and proceedings of a legal and regularly constituted Board of said Directors of said corporation, said book D, having been proved to be the minutes of the transactions of the said Board of Directors at their different meetings, and produced in evidence by the plaintiff, and the said plaintiff having put in evidence the transactions of said meeting of the 31st of December, 1840, as the transaction of the Board of Directors; and to the last-mentioned ruling and decision of the Judge the counsel for the defendant excepts.

Thirteenth. The said Justice erred in omitting to rule and decide that the plaintiff was estopped from denying that the proceedings of the said meeting of the 31st of December, 1840, were the proceedings of a regularly constituted Board of said Directors, after having himself proved those proceedings to have been the transaction of the Board of Directors; and to the last-mentioned omission to rule and decide, the counsel for the defendant excepts.

Fourteenth. The said Justice erred in ruling and deciding that the parole evidence of an authorization by the said Board of Directors, to the said president and cashier to execute the said assignment and transfer of said securities was insufficient to prove the fact of such an authorization; and to the last-mentioned ruling and decision of the Judge, the counsel for the defendant excepts.

Fifteenth. The said justice erred in ruling and deciding that the State of Michigan was not a *bona fide* purchaser of the said debt or demand against the Long Island Railroad Company, for a

valuable consideration, without notice of any want of authority in the president and cashier of the Morris Canal and Banking Company to assign and transfer the same; and to the last-mentioned ruling and decision the counsel for the defendant excepts.

Sixteenth. The said Justice omitted to rule and decide that the State of Michigan was a *bona fide* purchaser of the said debt or demand against the Long Island Railroad Company, for a valuable consideration, without notice of any want of authority in the president and cashier of the Morris Canal and Banking Company to assign and transfer the same; and to the last-mentioned omission to rule and decide, the counsel for the defendant excepts.

Seventeenth. The said Justice erred in ruling and deciding that the Act of the Legislature of New Jersey, passed on the 16th day of February, in the year 1829, entitled "An Act to prevent Frauds by Incorporated Companies," was of validity and force within the State of New York, either *propre vigore*, or by comity, as against the State of Michigan, and as against Abraham G. Thompson, her assignee, a citizen of this State, litigating in a court of this State, upon the ownership in, or title to, or securities for a debt or demand, secured by a mortgage upon real and personal property, situate, lying, and being within this State, such as the Long Island Railroad, and the engines, cars, and other personal property used thereon and therewith; and to the last-mentioned ruling and decision of the Judge, the counsel for the defendant excepts.

Eighteenth. The said Justice erred in ruling and deciding that Abraham G. Thompson was not a *bona fide* purchaser of said debt and securities from the State of Michigan for a substantial pecuniary consideration, without any notice of any defect in the title of the State of Michigan thereto; and to the last-mentioned ruling and decision of the Judge the counsel for the defendant excepts.

Nineteenth. The said Justice erred in omitting to rule and decide that Abraham G. Thompson was a *bona fide* purchaser of said debt and securities from the State of Michigan for a substantial pecuniary consideration, without any notice of any defect in the title of the State of Michigan thereto; and to the last-mentioned omission to rule and decide the counsel for the defendant excepts.

Twentieth. The said Justice erred in ruling and deciding that Abraham G. Thompson was not entitled to the judgment and protection of the court as a *bona fide* purchaser of said debt and securities; and to the last-mentioned ruling and decision, the counsel for the defendant excepts.

Twenty-first. The said Justice erred in omitting to rule and decide that Abraham G. Thompson was a *bona fide* purchaser of said debt and securities, and as such entitled to the judgment and protection of the court; and to the last-mentioned omission to rule and decide, the counsel for the defendant excepts.

Twenty-second. The said Justice erred in omitting to rule and

decide that the assignment and transfer of said debt and securities was executed in the State of New York and not in the State of New Jersey; and to the last-mentioned omission to rule and decide, the counsel for the defendant excepts.

Twenty-third. The said Justice erred in ruling and deciding that the said assignment and transfer of said debt and securities was executed in the State of New Jersey and not in the State of New York; and to the last-mentioned ruling and decision, the counsel for the defendant excepts.

Twenty-fourth. The said Justice erred in ruling and deciding that the release from the plaintiff to George Griswold, set up in the supplemental answer of the defendant, Henry Shelden, did not operate as a release to Abraham G. Thompson, and to the defendant Shelden, as his executor, from the claim and demand set up by the plaintiff in this action; and to the last-mentioned ruling and decision, the counsel for the defendant excepts.

Twenty-fifth. The said Justice erred in ruling and deciding that the said assignment of the said debt and securities was not an act in the performance of ordinary business within the meaning of the first by-law of the said Morris Canal and Banking Company; and to the last-mentioned ruling and decision, the counsel for the defendant excepts.

Twenty-sixth. The said Justice erred in ruling and deciding that the plaintiff was entitled to recover from the said defendant, Henry Shelden, the executor of the estate of said Abraham G. Thompson, deceased, the amount of the bonds of the Long Island Railroad Company, which had been paid by said Company to the said Thompson, in his lifetime, or to his said executor since; and also, the amount so paid upon the twenty other bonds of said company, for $228 88 each, with lawful interest; and to the last-mentioned ruling and decision of the Judge, the counsel for the defendant excepts.

Twenty-seventh. The said Justice erred in ruling and deciding that the mortgages given to the said Abraham G. Thompson, to secure the aforesaid bonds, amounting in all to forty thousand dollars, and all right, title, and interest therein, belonging to and equitably vested in the said plaintiff, and that he was entitled to an assignment and a delivery of the same, and that the said Shelden should assign and deliver the same to him; and to the last-mentioned ruling and decision of the Judge, the counsel for the defendant excepts.

Twenty-eighth. The said Justice erred in ruling and deciding that the said Henry Shelden, executor as aforesaid, should deliver unto the said plaintiff twenty bonds, of one thousand dollars each, made by such Railroad Company to said Thompson, or bearer, dated the 1st of May, 1843, ten of which were made payable the 1st of May, 1849, and the other ten the 1st of May, 1850, with the coupons thereto attached for interest, and also twenty other bonds of said Company, for $228 88 each, dated the said 1st of May, 1843, and

payable with interest, and that in default of such delivery he should pay the amount due thereupon out of the assets of said estate; and to the last-mentioned ruling and decision, the counsel for the defendant excepts.

Twenty-ninth. The said Justice erred in ruling and deciding that the whole amount of the bonds last mentioned having become due and payable, and the same having been delivered to said Thompson, the said plaintiff is entitled to a judgment against the said Henry Shelden, executor as before stated, and also against the said Long Island Railroad Company contingently, as before stated for the amount with lawful interest; and to the last-mentioned ruling and decision of the Judge, the counsel for the defendant excepts.

Thirtieth. The said Justice erred in ruling and deciding that the plaintiff should recover his costs against the estate of the said Abraham G. Thompson; and to the last-mentioned ruling and decision of the Judge, the counsel for the defendant excepts.

WM. A. HARDENBROOK,
Att'y for defendant, Henry Shelden, Ex'r, &c.

A. L. JORDAN,
Of Counsel.

To SKEFFINGTON SANXAY, Esq.,
Plaintiff's Attorney.

And thereupon on the 4th day of March, A. D. 1857, a judgment was entered according to such decision, and was as follows, to wit:

At a Special Term of the Superior Court, held at the City Hall, in the City of New York, on the 12th day of February, A. D. 1857.

Present, MURRAY HOFFMAN, Esquire, Justice.

JESSE HOYT,
v.
HENRY SHELDEN, Executor of Abraham G. Thompson, deceased, Honora Fisk, William H. Bolton, and David B. Baylis, Executors of George B. Fisk, deceased, The Long Island Railroad Company, Digby V. Bell, formerly Auditor-General, George B. Cooper, formerly Treasurer, and Gideon O. Whittemore, formerly Secretary of State, of the State of Michigan.

This case having been brought on to a hearing on the complaint, and the several answers of the defendants, the executor of Thompson, the Long Island Railroad Company, and the Executors of Fisk, and upon proofs as to all the defendants, except the public officers of the State of Michigan, from which proofs it appears, that said Bell,

Cooper, and Whittemore were each public officers at the time stated in the complaint in this cause, and were by the Statute Law of the said State of Michigan, directed to act in the premises referred to, and it appearing to this Court by due proof, that said persons last named have not appeared in this cause, and that all necessary and proper proceedings have been taken under the laws of this State, and the rules and practice of this court, to compel such appearing, and upon filing such proof, and upon hearing Mr. Sanxay and Mr. Evarts, of counsel for the said plaintiff, and Mr. Rodman, of counsel for the defendants, the executors of George B. Fisk, deceased, and Mr. De Forest, of counsel for the defendants, The Long Island Railroad Company, and Mr. Jordan, of counsel for the defendant, Shelden, the executor of said Abraham G. Thompson, deceased, severally, for said respective defendants, and mature deliberation being thereupon had,—

It is now ordered, adjudged, and decreed that the said plaintiff do recover judgment against the said public officers of the State of Michigan, and the said executor of said Thompson, and the said executors of said Fisk, and the said Long Island Railroad Company severally, as hereinafter stated, and that the title to the property, bonds, and mortgages, in the complaint mentioned and described, be, and the same is hereby declared to be in the plaintiff, in this action, notwithstanding the supposed assignment and transfer of the same to the State of Michigan as set out in said complaint, and that such title became, and was vested in him, by and through, and at the time of the transfer thereof to him, by the receiver of the Morris Canal and Banking Company, and that said State never acquired or became possessed of any right, title, or interest therein, or thereto, and that the said plaintiff do recover the same, and the increase thereof, and the property and bonds, and securities into which the same may have been converted as hereinafter stated.

And it is also ordered and adjudged, and decreed that the right of the said plaintiff to the forty bonds of the Long Island Railroad Company for one thousand dollars each, and to forty other bonds of the same Company, for two hundred and twenty-eight dollars and eighty-eight cents, each, all of which bear date, the first day of May, 1843, and payable one-fourth on the first day of May, 1847, one-fourth on the first day of May, 1848, one-fourth on the first day of May, 1849, and one-fourth on the first day of May 1850, with seven per cent. interest, payable half-yearly, on the first days of November and May, in each year as mentioned and referred to in the pleadings and proofs in this cause is fully established, and the same are adjudged and decreed to belong to him as his own property, together with the mortgages given by the said Long Island Railroad Company to Abraham G. Thompson to secure the payment of the said bonds, with the interest thereon.

And it is further ordered, adjudged, and decreed, that the said

Henry Shelden, executor of the said Abraham G. Thompson, deceased, do pay out of the estate of said Thompson, to the said plaintiff, the principal sum of $24,577 76, paid by the said Long Island Railroad Company, on the first day of May, in the years 1847 and 1848, one half of which on each of said day, the same being for twenty bonds of said Railroad Company, of one thousand dollars each, and twenty other bonds of same Company, for $228 88, each, and the interest thereon as per Schedule A., hereto annexed, and forming a part of this decree, which said principal sum and said interest amount together to the sum of $69,297 51.

And it is further ordered, adjudged, and decreed, that the said Henry Shelden, executor as aforesaid, do deliver to the said plaintiff, twenty bonds of one thousand dollars each, made by the said Railroad Company to said Thompson, or bearer, bearing date the first day of May, 1843, ten of which are made payable on the first day of May, 1849, and the other ten, on the first day of May, 1850, with coupons thereto attached for interest on the same, at the rate of seven per cent. per annum, from the first day of May, 1848, and that he also delivered to the plaintiff twenty other bonds of the said Long Island Railroad Company, for $228 88, each, and dated the said first day of May, 1843, and payable to Abraham G. Thompson, or bearer, ten of which on the first day of May, 1849, and the other ten on the first day of May, 1850, with interest at the rate of seven per cent. per annum from the first day of May, 1848, and in default of the delivery of the said bonds within ten days after the entry of this decree, and a service of a copy thereof on the said Henry Shelden, executor as aforesaid, that he, the said Henry Shelden, executor, shall pay out of the estate of the said Abraham G. Thompson, deceased, to the said plaintiff, the said principal sum mentioned in said forty bonds, and the interest thereon from the first day of May, 1848, at and after the rate of seven per cent. per annum, which together would amount to the sum of $40,131 38, as per Schedule B., annexed, and which forms a part of this decree.

And it is further ordered, adjudged, and decreed, that in the event the said Henry Shelden, executor as aforesaid, shall not pay to the said plaintiff the sum of money hereinbefore stated, and deliver to him, the said plaintiff, the forty bonds also hereinbefore mentioned, the principal sum of which amounts to $24,577 76, the defendants, the said Long Island Railroad Company, shall pay to the said plaintiff the principal sum of $12,288 88, paid by the said Railroad Company in the month of May, 1848, and after the commencement of this action, and also, the sum of $24,577 76, admitted by the answer of said Railroad Company to be due and unpaid, and the interest on both said sums, from the first day of May, 1848, to the 1st February, 1857, which together would amount to the sum of $59,448 03, upon delivery to the said Long Island Railroad Company of the said twenty bonds of $1000 each, and the said twenty bonds of $228 88,

each, as by Schedule C. hereunto annexed, and forms part of this decree.

And it is further ordered, that this decree shall in nowise interfere with the equities of the defendants as between themselves.

And it is further ordered, that the said plaintiff do recover against the said defendant Henry Shelden, executor as aforesaid, his costs to be taxed in this action, and as to the other defendants, there be no recovery of costs to either party.

And it is further ordered, adjudged, and decreed, that the said Henry Shelden, executor as aforesaid, do assign to the said plaintiff the said several mortgages given by the said Long Island Railroad Company to said Thompson, to secure the payment of the bonds hereinbefore referred to.

(Signed) MURRAY HOFFMAN.

Schedule A.

1847.			
May 1, Paid by Long Island Railroad Company,			
10 bonds of $1000 each, ...			$10,000 00
10 bonds of $228 88, ...			2,288 88
			$12,288 88
Interest to February 1, 1857, 9 years 9 months, ...			8,172 10
			$20,460 98
Coupons or interest on			
40 bonds of $1000 each, . .		$40,000 00	
40 bonds of $228 88 each, . .		9,115 20	
		49,115 20	
1 November, 1843, 6 months interest, .		1,719 03	
Interest to February 1, 1857, 13 years 3 months, . . .		1,584 37	3,303 40
1 May, 1844, 6 months interest on .		1,719 03	
1 February, 1857, interest to this day, 12 years 9 months, . . .		1,534 73	3,253 76
1844.			
Nov. 1, Interest 6 months, . . .		1,719 03	
1857.			
Feb. 1, Interest to this date, 12 years 3 months, ...		1,474 16	3,193 19
1845.			
May, Interest 6 months, . . .		1,719 03	

1857.		
Feb. 1, Interest to this day, 11 years 9 months, ...	1,413 90	
		3,132 93
1845.		
Nov. 1, Interest 6 months, . . .	1,719 03	
1857.		
Feb. 1, Interest to date, 11 years 3 months, ...	1,353 75	
		3,072 78
1846.		
May 1, Interest 6 months, . . .	1,719 03	
1857.		
Feb. 1, Interest to date, 10 years 9 months, ...	1,293 56	
		3,012 59
1846.		
Nov. Interest 6 months, . . .	1,719 03	
1857.		
Feb. 1, Interest to date, 11 years 3 months, ...	1,233 40	2,952 43
1847.		
May 1, Interest 6 months, . . .	1,719 03	
1857.		
Feb. 1, Interest to date, 9 years 9 mos.	1,173 13	
		2,892 16
		$45,274 22
1847.		
May 1, There was paid, as before stated, the sum of	12,288 88	
Leaving due for large bonds, 30 of $1000 each, . . .	30,000 00	
Small bonds, 30 of $228 88, .	6,866 40	
	36,866 40	
1847.		
Nov. 1, Interest on this sum for 6 mos.	1,290 34	
1857.		
Feb. 1, Interest on this sum for 9 years 3 months, ...	835 46	2,125 80
1848.		
May 1, Six months interest as above, .	1,290 34	
1857.		
Feb. 1, Interest to date, 8 years 9 mos.	790 34	2,080 68
1848.		
May 1, Paid by Long Island Railroad Company, as follows:		

10 bonds of $1000 each, . .	$10,000 00		
10 bonds of $228 88 each, . .	2,288 88	$12,288 88	
1857.			
Feb. 1, Interest to this date, 8 years 9 months, ...		$7,527 93	
			69,297 51
Leaving due of principal,			
20 bonds of $1000 each, . .	$20,000 00		
20 bonds of $228 88 each, . .	4,577 60		
	24,577 60		

Schedule B.

20 bonds for $1000, due May 1, 1848, ...	20,000 00		
20 bonds for $228 88, due May 1, 1848, ...	4,577 60		
	24,577 60		
Interest from 1 May, 1848, to 1 Feb., 1857, 8 years and 9 months, ...	15,553 78		
			40,131 38

Schedule C.

1848.			
May 1, Paid by Long Island Railroad Company, the principal sum of	12,288 88		
1857.			
Feb. 1, Interest to this day, 8 years 9 months, ...	7,526 54		
			19,815 42
1848.			
May 1. The Long Island Railroad Company, admit in the answer, there was due on this day, ...	$24,577 62		
1857.			
Feb. 1, Interest to this day, 8 yrs. 9 mos., ...	15,054 79	$39,632 41	
			$59,448 03

MURRAY HOFFMAN.

From which judgment an appeal was taken to the General Term,

by the said defendant, Henry Shelden, and notice of such appeal was duly and properly given, according to law, which notice was as follows:

"New York Superior Court."

"JESSE HOYT, Plaintiff,"
"*against*
"HENRY SHELDEN, Executor of the last will and testament of Abraham G. Thompson, deceased, impleaded with others, defendants."

"Please to take notice, that the defendant, Henry Shelden, executor of the last will and testament of Abraham G. Thompson, deceased, appeals to the General Term of this Court, from the judgment entered in this action, upon the decision of the Honorable Murray Hoffman, a Judge of this Court, at Special Term; the judgment roll, on which judgment was filed on the 4th day of March, 1857."

"Dated, New York, March 14th, 1857."

"WM. A. HARDENBOOK,
"*Att. for Deft., Henry Shelden, Exr., &c.*

"GEORGE T. MAXWELL, Esq.,
"*Clerk of the Superior Court.*

"SKEFFINGTON SANXAY, Esq.
"*Att. for Plaintiff.*"

And thereupon, the said Justice Hoffman made and drew up in writing his findings and conclusions of law and fact as follows, viz.:

Superior Court.

JESSE HOYT,
against
HENRY SHELDEN, Executor, &c., of ABRAHAM G. THOMPSON, and others.

Finding and conclusions of the Judge at Special Term.

The cause having been tried before me, at Special Term, without a jury, I find the following matters of fact:

1. That the several acts of the legislature of New Jersey, mentioned in the bill of complaint, and copies whereof are annexed thereto, and the act of such legislature, purporting to have been passed the 16th of February, 1829, were duly passed, and have been admitted or proven before me, and true copies are annexed to such complaint, or the recitals therefrom, set forth in the complaint or the case made herein.

2. That the Morris Canal and Banking Company went into operation under the first-mentioned act.

3. That the Long Island Railroad Company was an incorporation, duly incorporated under a law of the State of New York; and that the said act and other acts relating to the same, mentioned in the bill of complaint, were duly passed; and further, that George B. Fisk was president thereof, from prior to the 1st of November, 1837, to some time in the year 1847.

4. That the said Long Island Railroad Company became indebted to the said Morris Canal and Banking Company; and thereupon, on or about the 3d day of November, 1839, executed and delivered to such Company, a mortgage duly authorized and signed by said George B. Fisk, the president, upon various engines, cars, and other property of such Company, to secure the sum of sixty thousand dollars.

5. That on the 6th of March, 1841, the said Long Island Railroad Company, as additional security, executed and delivered to the said Morris Canal and Banking Company, a mortgage upon the lands on which their road was built, and on other real estate, as stated in the pleadings.

6. That in July, 1840, a suit was commenced in the Supreme Court, of the State of New York, against the said Morris Canal and Banking Company, by Richards and Selden, upon which a judgment was recovered on the 12th of May, 1841, for the sum of $38,364 05, and $266 85 for costs, and which judgment was docketed the same day.

7. That a certain bond or obligation of such Company, for the sum of $35,500, fell due on the 1st of March, 1840; that payment of the same was demanded and refused, and the same protested.

8. That on the 11th of August, 1841, the said Richards and Selden, filed a bill of complaint in the Court of Chancery, of the State of New Jersey, in which they alleged the insolvency of the said Morris Canal and Banking Company, set forth the provisions of an act of the legislature of that State, entitled "An Act to prevent Frauds by Incorporated Companies," passed the 16th of February, 1829, and hereinbefore referred to; and, after various other averments, prayed for an injunction to prohibit the said Company from further operations, and for the appointment of receivers of its property.

8. That thereupon such proceedings were had, as that on the 29th of January, 1842, a decree or decretal order was entered in such cause, among other things, appointing receivers in such suit; that a supplemental order was afterwards made for the substitution of Alx. M. Pennington, as one of such receivers; and that a true copy of such decree or decretal order is set forth in the preceding case.

9. That a petition of the receivers of such Company, dated the 10th of October, 1844, an order of reference of the same date, to

Henry A. Ford, Master in Chancery, a petition of Skeffington Sanxay, filed April 30th, 1845, and an order of such Court of Chancery, referring the same to Master Ford, were duly made and presented, and are abstracted in the foregoing case.

10. That on the 26th of July, 1845, the said Master Ford made a report, which is set forth in substance in this case; that the letter of the receivers of said Company, duly sworn to, stated in this case, was annexed thereto.

11. That on the 20th of June, 1845, the said Master Ford made his report under the order of the 29th of April, 1845, a part of which is truly set forth in this case; and thereupon, that an order of the said Court of Chancery of New Jersey, was duly made, dated the 29th day of October, 1845, whereby, among other things, the receivers were authorized to transfer to the said Skeffington Sanxay, the assets enumerated in the schedule annexed, to the report of such Master.

12. That in pursuance of such authority, the said receivers, by an instrument bearing date the 13th of November, 1845, did transfer and assign unto the said Skeffington Sanxay, all and singular, the assets, property, claims, and demands specified in the schedule thereto annexed; and among the claims enumerated in said schedule, was that in controversy in this suit, described as "A debt due to the Morris Canal and Banking Company, from the Long Island Railroad Company, for $61,000 or thereabouts, assigned, or pretended to be assigned to the State of Indiana or Michigan, by the Morris Canal and Banking Company, supposed to be in judgment;" and which assignment and schedule are set forth in the preceding case.

13. That the said Skeffington Sanxay, by an instrument under his hand and seal, dated the 19th day of December, 1846, assigned and set over unto the plaintiff in this action, all his right, title, and interest, in and to the said property, effects, and claims, which instrument is also set forth in this case.

14. That on and before the 20th day of October, 1840, and the year 1841, one Robert Stuart was the Treasurer of the State of Michigan, and acted in that capacity, and as agent in the acts of negotiations and contracts between such State, and the Morris Canal and Banking Company hereinafter mentioned. That while such treasurer and agent, he caused to be prepared, and on the 23d day of October, 1840, duly sworn to, a bill of complaint addressed to the Chancellor of the State of New Jersey, wherein he set forth on behalf of the said State of Michigan, the indebtedness of said Company to such State, and that default had been made in payment of the same, that such Company had become and were insolvent, and did so become insolvent on the first day of March last past, within the true intent and meaning of an act of the Legislature of the State of New Jersey, passed on or about the 16th day of February, 1829, entitled "An Act to prevent frauds by Incorporated Companies;"

that such Company had suspended their ordinary banking business for want of funds to carry on the same; that since such insolvency, the said Company had assigned to divers persons, and especially to the State of Indiana, estate, effects, choses in action, and property, which said assignments were contrary to the said statute, and inoperative and void. And thereupon it was prayed in such bill of complaint, that an injunction might issue; that receivers of such Company might be appointed, and that all such assignments and transfers of property made since the said 10th of March last, might be set aside and declared inoperative and void.

15. That by the charter of the Morris Canal and Banking Company, it was provided that the corporate powers of the Company should be exercised by a Board of Directors, to consist of twenty-three persons, who should elect a president. That such Company was authorized to adopt all proper and lawful By-Laws and ordinances, as should be judged necessary or convenient for such corporation, in relation to its canal and banking operations. That on the 10th of June, 1836, a set of By-Laws was adopted, by the first of which it was ordained, that five directors, of whom the president should always be one, or in his absence, seven directors should form a quorum, for the transaction of the ordinary business of the Company, and by another of such By-Laws, no officer, agent, or director of such Company, without being empowered by the board, should make any promise, agreement, or engagement of any kind whatever, purporting to bind the Company, or by which its stock, funds, or credit might in any wise be affected.

16. That at a meeting of the Board of Directors, held the 5th of November, 1840, there were present the president and four directors, when it was stated by the president, that an agreement had been nearly concluded for a settlement with the State of Michigan, and a liquidation in gradual instalments.

17. That on the 9th day of December, 1840, an agreement was made and entered into by and on behalf of the State of Michigan, through its agent, the said Robert Stuart, of the one part, and purporting to be by and on behalf of the Morris Canal and Banking Company, of the other part, which agreement is set forth in the preceding case, marked Schedule A, to the bill of complaint. That a meeting of the directors of the said Company was held on the 31st day of December, 1840, at which such agreement and papers connected therewith were presented and read. That there were then present the President, Vice-President, and three other directors, when it was unanimously resolved, that the agreement made by the executive officer with the State of Michigan, and the accompanying papers in execution thereof, be, and the same were thereby, affirmed, and that the executive officers have power to comply in all respects with the provisions thereof. That the agreement before referred to was signed by the President, and the seal of the said Company

affixed thereto, and attested by the Cashier, and was also signed by the said Robert Stuart, Treasurer of the State of Michigan.

18. That among the securities transferred or agreed to be transferred to the said State of Michigan, by the said agreement, was the demand and claim, and all accompanying securities of such Company against the said The Long Island Railroad.

19. That at the period of such agreement, and for some time prior thereto, the said Morris Canal and Banking Company was insolvent, and unable to pay its debts, and that assignment or transfer of the property in question was made in contemplation of its insolvency, and was made with full knowledge of such insolvency, had by the State of Michigan through its Treasurer, as well as by the said Company.

20. That on the 26th of April, 1841, an instrument in writing, and under the seal of the said Morris Canal aad Banking Company, was executed and delivered, signed by the President and attested by the Cashier thereof, whereby such Company professed to assign and transfer unto the State of Michigan the indenture of mortgage, bearing date the 6th day of March, 1841, heretofore mentioned, as executed by the Long Island Railroad Company to the said Morris Canal and Banking Company, together with the said bond or obligation therein described, and the money due or to grow due thereupon, which instalment is set forth at large in the preceding case.

21. That the State of Michigan, through its agents, advertised such securities, delivered and so purporting to be transferred to them for sale at public auction in the city of New York; that prior to such sale the same had been offered at private sale to the said Abraham G. Thompson; that George Griswold acted jointly with another, as the agent of such State, in the matter; that a copy of the agreement of the 9th of December, 1840, was exhibited to said Thompson; that he was informed that the State of Michigan sold only what right or title it possessed, and would not guaranty the solvency of the said Morris Canal and Banking Company or the title; and that the papers connected with the claim of such State were examined by said Thompson or his attorneys and agents.

22. That the said Abraham G. Thompson became the purchaser of such securities at public auction, on or about the day of May, in the year 1843, for the sum of $20,000; that there was then due upon the same over the sum of $40,000, besides interest; and thereupon, on or about the 30th day of May, 1843, the said State of Michigan executed and delivered to the said Thompson an assignment and transfer of the aforesaid bond or obligation, and the mortgage accompanying the same, of the 6th of March, 1841, and all money due or to grow due thereupon, so executed and delivered by the said Long Island Railroad Company, as before stated.

23. That George Griswold was, at the time of the purchase of such securities, jointly interested with the said Abraham G. Thompson

therein, but that prior to the 6th of December, 1847, he had transferred to said Thompson all his right, title, and interest therein.

24. That in June, 1850, certain persons, creditors of the Morris Canal and Banking Company, upon what was known as sterling bonds, brought an action against some of the directors of the Morris Canal and Banking Company, and among them George Griswold. That they made the plaintiff herein a party as claiming to possess those demands against Griswold, and the right to enforce them.

25. The object of that bill was mainly to make Griswold and the others responsible for certain violations of duty, and to reclaim from them various securities alleged to have been illegally transferred to them.

In July, 1852, the plaintiff herein answered the original bill, and filed a cross bill. In this he adopted the allegations of the original bill as his own, and he prayed as against Griswold the relief for himself which was sought by the parties to such original bill, among other things, that all the securities, bills receivable, choses in action, &c., received by Griswold, and being assets of the Company, might be given up to him.

26. That on the 17th of November, 1853, a release or instrument of writing was made, executed, and delivered by and between the said Jesse Hoyt, the plaintiff herein, and the said George Griswold, which release is fully set forth in the preceding case.

27. That the State of Michigan, on the 31st day of March, 1840, and on the 17th day of February, 1842, passed the Acts referred to in said complaint; and that Robert Stuart, Treasurer of said State, and the other public officers named in said Acts, acted in pursuance of the provisions of said Acts, as also stated in said complaint; and that the Governor of said State, on the 14th of January, 1841, communicated, by special message, to the Legislature of said State, in manner and form as also stated in said complaint; and that the said message and the papers therein referred to were printed by the printer of said State for its use, as also mentioned in said complaint.

Conclusions of law.

"And my conclusions of law are—

"1. That the transfer and delivery to the State of Michigan of the securities in question, in this cause professed to be made by the officers of the Morris Canal and Banking Company, were illegal, inoperative, and incapable of passing any title or right in or to the same.

"2. That such Company and its directors could, at any time thereafter, have declared such transfer null and void, and have taken legal proceedings in any competent tribunal to have the same so adjudged and decreed.

"3. That the right and title to such securities passed, by operation

of law and the orders of the Court of Chancery of New Jersey, with the right to institute such proceedings to the receivers of such Company.

4. "That, by the various orders and transfers before mentioned and referred to, the right, title, and interest therein and thereto passed to and became vested in the plaintiff in this suit, with the right to proceed in any competent tribunal to obtain possession of the same or to recover the money due thereupon, all which had been paid thereupon, with notice of his claim or since the filing of the bill herein."

5. That Abraham G. Thompson and George Griswold, and each of them, acquired in and by the transfer of such securities to the former, by and in the name of the State of Michigan, no other or better title or right thereto than was possessed by the said State.

6. That the plaintiff is entitled to sue for and establish his right to such securities and the avails or proceeds thereof, or moneys due thereon in this Court as well against the said Abraham G. Thompson, or those representing or claiming under him, as against the said The Long Island Railroad Company.

7. That the release set forth as executed by the plaintiff herein, to George Griswold, dated the 17th day of November, 1853, has no legal or equitable operation so as to discharge the present defendants from liability to the plaintiff on account of such securities, or in any way to affect his right and claim thereto.

And thereupon I made the decision in favor of the plaintiff conformable to which the judgment was entered hereinbefore set forth.

MURRAY HOFFMAN.

New York Superior Court.

JESSE HOYT
v.
HENRY SHELDEN, executor of Abraham G. Thompson, deceased, impleaded with others.

Objection to the findings and omissions to find, of the Honorable Murray Hoffman, the Justice before whom the above entitled cause was tried, on matters of fact.

The counsel for the defendant objects and excepts to the said findings, &c., as follows:

First. That said Justice erroneously omitted to find, as matter of fact, that the plaintiff himself proved and put in evidence the Book D, of minutes of the Morris Canal and Banking Company, and proved that said book contained the minutes of the transactions of the Board of Directors of said Company at their different sittings, and that the plaintiff put in evidence the entry in said book of the proceedings of

said Board of Directors, of the 31st of December, 1840, on page 313 of said book, which is in their bonds, viz.:

"At a regular meeting of the Board held at Jersey City, Thursday, the 31st of December, 1840, were present, the president, the vice-president, Mr. Kinney, Mr. Bacot, and Mr. Southard:

"The agreement with the State of Michigan, of 9th December, 1840, was read, and the following resolution was unanimously adopted by the Board.

"Resolved, That the agreement made by the executive officers with the State of Michigan, and the accompanying papers in execution thereof, be and the same are hereby approved; and that the executive officers have power to comply in all respects with the provisions thereof."

Second. That the said Justice erroneously omitted to find that the meeting of the Board of Directors, mentioned in his sixteenth finding of fact, was approved by the Book D, of minutes of the transactions of the Board of Directors of the Morris Canal and Banking Company, introduced, approved, and put in evidence by the plaintiff.

Third. That the said Justice erroneously omitted to find that the Board of Directors of said Morris Canal and Banking Company, had notice by the aforesaid entry of the 31st day of December, 1840, upon the book of entries of their transactions, that the executive officers had executed the contract of the 9th of December, 1840, with the State of Michigan, and acquiesced in and thereby satisfied the same.

Fourth. That the said Justice erroneously omitted to find that the plaintiff himself put in evidence the agreement of the 9th of December, 1840, between the said Morris Canal and Banking Company and the State of Michigan.

Fifth. That the said Justice erroneously omitted to find that Abraham G. Thompson and George Griswold were citizens and residents of the State of New York, at the time of their purchase of the demand in question, and that the Long Island Railroad Company were a corporation of the State of New York, and that the securities for the said demand were all executed in the State of New York, and not in New Jersey, and that the property as well personal as real, mortgaged to secure said demand by the said Long Island Railroad Company was, and at all times had been, and was to remain situate within the State of New York, and not within the State of New Jersey.

Sixth. That the said Justice erroneously omitted to find that the assignment of the 9th of March, 1840, of which Schedule A. to the bill of complaint is a copy, and the assignment also for the State of Michigan to Abraham G. Thompson, were executed in the State of New York, and not in the State of New Jersey.

Seventh. That the said Justice erroneously found that the securities in question had, before the sale thereof, been offered to Abraham G. Thompson, at private sale.

Eighth. That the said Justice erroneously found that any papers or documents relative to the title of Michigan (except the agreement of the 9th of December, 1840), were exhibited to Abraham G. Thompson before the sale.

Ninth. That the said Justice erroneously found that the papers connected with the claim of Michigan (other than the said agreement of the 9th of December, 1840), were examined by said Thompson, or his attorney, or agents.

Tenth. That the said Justice erroneously found that the said Abraham G. Thompson had notice of the insolvency of the Morris Canal and Banking Company, and the defects in the title of the State of Michigan, when he purchased said securities.

Eleventh. That the said Justice erroneously omitted to find that the said Abraham G. Thompson purchased the said securities for a valuable pecuniary consideration, to wit, seventy thousand dollars, without notice of any defect in the title of the State of Michigan.

Twelfth. That the said Justice erroneously omitted to find that upon the transfer by the said George Griswold, to the said Abraham G. Thompson, of his, the said Griswold's, joint interest with said Thompson in said Long Island Railroad securities, the said Thompson paid to him, said Griswold, the value thereof in money.

Thirteenth. That the said Justice erroneously omitted to find more fully than he did find that the object and prayer of the cross-bill filed by the said plaintiff, Jesse Hoyt, against George Griswold and others, were among other things to compel the said George Griswold to account for and pay to the plaintiff for all bills receivable, choses in action, rights, credits, effects, and assets of the Morris Canal and Banking Company that had come to his hands by sale, assignment, or transfer made to him in contemplation of the insolvency of the said Morris Canal and Banking Company, or after its actual insolvency. And,

Fourteenth. The defendant excepts to all and each of the findings and rulings of the law by the said Justice at special term.

WM. A. HARDENBROOK,
Defendant's Attorney.
A. L. JORDAN,
Of Counsel for def't.

Opinion.—Superior Court.

JESSE HOYT,
agt.
HENRY SHELDEN, Executor, et al.

Special Term, June, 1856.

S. SANXAY AND EVARTS, for Plaintiff,
RODMAN, for Executors of Fisk,
A. L. JORDAN, for Executors of Thompson,
H. DE FOREST, for Long Island Railroad Co.

HOFFMAN, Justice.

As this case went from this Court to the Court of Appeals, upon a demurrer to the plaintiff's bill, it is first essential to inquire what was the case presented on that bill, and what the Court of Appeals has actually decided.

The Superior Court held that the plaintiff could not sustain his action, and allowed a demurrer to the bill of complaint.

The points established by the Court of Appeals, are as follows:

1st. The case made by distinct averments of the bill, was, that the assignments to the State of Michigan were made by the president and cashier of the Morris Canal and Banking Company without the assent or authority of the Board of Directors.

2d. The executive officers of a corporation are sometimes permitted by the Directors to do acts without their express authority, and are thus held out to the public as having the power to do such acts. Then the corporation will be bound. But all idea of implied authority was negatived by the bill and demurrer.

3d. Unless, then, the charter (which was made part of the bill) conferred the power, it could not be held to exist. There were no provisions in the charter which could be treated as bestowing it. The management and disposition of the property was in the Board of Directors.

4th. A deed under the corporate seal bears presumptive evidence of its being executed by competent authority from the corporation. But this presumption may be repelled, and the seal shown to have been affixed without authority.

The assignments in question, upon the facts shown, were absolutely void, and could be set aside by the corporation itself, or by its creditors, in connection with the fact of insolvency. The State of Michigan, even if a *bona fide* purchaser, acquired nothing, and could confer nothing on Thompson, who purchased from it. The Morris Canal and Banking Company remained owners of the debt.

5th. It is next held that the law and proceedings in New Jersey, as stated in the bill, were sufficient to vest in the receivers all the title of the corporation to the securities in question. Various objections to this conclusion are examined and overruled.

6th. Next, that the receivers appointed in New Jersey could have sustained an action to recover the debt in question in the Courts of New York. That the assignment made by them was a sufficient valid sale and transfer of all the right of the corporation, and of their own title to the plaintiff; and that the plaintiff was entitled to sue for the demand in our tribunals. The Court below was in error when it ruled that the receivers could not sell any portion of the property, except what had been reduced to possession.

7th. The receivers having full power to sell outstanding claims, like that in question, and the sale being a judicial sale, the doctrine of champerty was inapplicable, and the Court below erred in that particular.

The demurrer was overruled, with liberty to answer.

Ruggles, presiding judge, and Mr. Justice Paige delivered opinions. I shall hereafter have to notice the qualifications found in the opinion of the latter, as to the question of the authority of the president and cashier.

In the first place, upon the pleadings and the testimony taken before me, there is nothing to vary the case raised by the demurrer, so far as merely relates to the plaintiff's title to sue here upon the securities.

The important and the difficult question is, whether the title of the State of Michigan, and of Thompson under it, is not a paramount and a better title than that of the plaintiff. In point of time, it was previous to the institution of the suit, in which the receivers were appointed, who transferred to the plaintiff.

In the first place, it is insisted, that the Board of Directors have, in fact, authorized the transfer. The evidence is this: Mr. Biddle, the former vice-president, swears, that his impression is, that the agreement of the 9th of December, 1840 (Schedule A. to the bill), was made by the authority of the Board of Directors, or by the authority of a committee. "My impression is, that there was a special committee for that purpose; but it is merely an impression."

That agreement was for the transfer of the large mass of securities, for which the mortgage in question was one. The witness adds: "He believes the directors had eventually a general knowledge (perhaps they did not, at the moment) of the purport of the said agreement with the State of Michigan. The usual course would be for a committee to report, and for the Board to confirm; and I have no further knowledge or recollection beyond what *what* was the usual course of proceeding."

This evidence was objected to, on the ground that resolutions and minutes are the only proper evidences of corporate acts.

The defendants afterwards produced the book of minutes of the Company. The proceeding of a meeting of the Board of Directors of the 5th of November, are transcribed. At this meeting, the president, vice-president, and three of the directors were present. The president stated that they had concluded upon terms of settlement with the State of Michigan, so as to give a long period without payment of money, and a subsequent liquidation in gradual instalments.

A transcript of the proceedings at a meeting of the 31st of December, 1840, was also read, and is as follows:

"At a regular meeting of the Board, held at Jersey City, &c., were present, the president, the vice-president, Mr. Renney, Mr. Bacot, and Mr. Southard.

"The agreement with the State of Michigan, of the 9th of December, 1840, was read, and the following resolution was unanimously adopted by the Board:

"Resolved, That the agreement made by the executive officers,

with the State of Michigan and the accompanying papers in execution thereof, be, and the same are hereby approved, and that the executive officers have power to comply, in all respects, with the provisions thereof."

By the original act of the corporation, the management of the concerns of the Company, was vested in fifteen directors, to be chosen by the stockholders. By the 4th section of the act of March the 5th, 1836, it was enacted, that the corporate powers of the Company should be exercised by a Board of Directors, to consist of twenty-three persons, who shall elect a president annually from their body, and possess the other privileges and powers already conferred by law. In section five, is a provision for the classification of the directors, and for successive elections.

There is nothing in the case to show any provision of law, general or special, which can take the case out of the general rule, prescribing that the powers conferred upon a body of a fixed number of individuals, must be exercised by a majority. The parol evidence of an authorization is also wholly insufficient; and, in my judgment, the defendants fail entirely in making out this point of their case.

Next, it is again urged, on the part of the defendants, that their case is brought within the rules stated by Mr. Justice Paige, in his opinion in the Court of Appeals. It is insisted that if those rules are not absolutely the law of the case, yet they are clearly rules of law, and must decide it.

The learned Judge says, that "if the assignment had been made to the State of Michigan for a new consideration paid at the time, or if the State had relinquished any security then held by it, so as to entitle it to the character of a bona fide purchaser for a valuable consideration; and if the agents or officers of the State, who obtained the assignment, had no notice of the want of authority of the officers of the Company, to execute such assignment, I think that Company would be estopped from denying that its president and cashier had competent authority to execute and deliver them (6 Hill, 96).

"But, inasmuch as the State of Michigan received the assignments merely as collateral security for an antecedent debt, the Morris Canal Company, or its representatives, are not estopped from denying the authority of the president and cashier, to execute and deliver the assignment."

If the case supposed by the learned Judge, had been made out of a surrender of available and equivalent securities for the acquisition of those contained in the agreement, it might still, with great respect, be questioned, whether the State of Michigan could have been protected. It would be difficult to say, that the agents were not bound to require and examine the authority of those professing to assign. No little difficulty would arise in reconciling these positions with portions of the opinion of the presiding Judge. If his rule is correct, that when an assignment requires the use of the common seal, it

cannot be made without the authority of the Board, it seems a necessary consequence, that even a purchaser cannot deal with safety, unless he ascertains (by a certified copy of a resolution or otherwise) that such an authority has been given, in regular legal consistency with the charter or other law.

In this connection, also, a provision of our own statute may be referred to. By the eighth section of the Revised Statutes, "Of Moneyed Corporations" (1 R. S. 591), after declaring that no conveyance or assignment of any real estate or effects of such a corporation exceeding in value $1000, shall be made without a previous resolution of the Board of Directors, it is provided, "that it shall not be construed to render void any conveyance or assignment, in the hands of a purchaser, for a valuable consideration, and without notice."

Let it be supposed that this provision may be applied to the Morris Canal and Banking Company, without any proof of the existence of a similar one in New Jersey, the answers to its operation, so as to protect the assignment in question, are decisive.

First. The State of Michigan was not a purchaser for a valuable consideration within the sense of this statute, or within the proposition of Mr. Justice Paige; and *next*, the State of Michigan had notice of the insolvency of the Company, and is therefore brought within the provision of the statute of New Jersey, set forth in the testimony, and which is almost a transcript of the 9th section of our own act.

The case of White *vs.* The Springfield Bank, in this Court (3 Sandf. S. Rep. 222), settled, that a purchaser for a valuable consideration of negotiable paper, was not one who merely advances money or value at the time, but also one who discharges an existing debt in consideration of the securities. The holder is not affected in such a case by equities which would defeat an action between the original parties.

Whether a surrender of available securities without an extinction of the debt, will be sufficient, is, perhaps, not determined.

Passing by the question whether the rule as now declared is not solely applicable to negotiable paper, it seems to me clear that the State of Michigan cannot be brought within it. The agreement of the 9th of December, 1840, recites the debt by bond, and the amount of $823,295 83, as due, and provides for the delivery of the various securities afterwards enumerated, as collateral security for the payment of the same with interest.

The third article stipulates for the payment of the amount at different specific periods; the fifth, for the substitution of securities. By the sixth, the State of Michigan was to forbear any demand, suit, or process on account of their debt until the 1st of January, 1844, when $100,000 was to be paid, and upon payment of that sum at that time, and the other sums annually, as agreed upon, it was in like

manner to forbear legal proceedings. In case of failure to pay as provided, the State was at liberty to sell the securities to a sufficient amount to pay all arrears, or to take such other proceedings against the Company as it might deem proper.

Thus the debt remained strictly and jealously preserved. There was no surrender of any property previously held. There was a bare agreement to abstain from legal proceedings for a definite period, and longer if no default was made.

I cannot perceive how the case has been varied in this particular from that presented on the demurrer, and I must regard the decision of the Court of Appeals as plainly governing it.

The point most strenuously urged and contested on the argument was that, which relates to the transfer in question being in violation of the Statute of New Jersey, prohibiting any assignment when a Company is insolvent, or in contemplation of insolvency; and declaring all such assignments, &c., absolutely void.

That the Morris Canal Company was then insolvent, and that the assignments were made in contemplation of insolvency (*in reference to, and in consequence of it*), does not admit of doubt. I consider it equally clear, that the State of Michigan is chargeable with notice of such insolvency. Passing by all other matters (especially those connected with the legislative proceedings in Michigan), it is indisputable, that the treasurer and agent in the identical business, assisted in preparing the bill of complaint in the Chancery of New Jersey; was perfectly cognizant of its contents, and agreed to their truth. In that bill it is expressly averred, that the Company was insolvent, and was so within the intent and meaning of the act referred to; that it had suspended its ordinary banking business for the want of funds; that the whole of its real and personal estate was insufficient to pay its debts, and that since the Company had become insolvent, the directors and other officers had made transfers of property to divers persons, and especially to the State of Indiana; all which were contrary to the statute and wholly void.

It cannot be imagined that under such circumstances, these assignments could be supported in New Jersey. It cannot be supposed that if the Company were a corporation of New York, and the dealings had taken place here, where a statute so similar exists, the assignments would not be unhesitatingly avoided. It is needless to refer to any other authority than that of Gillett *v.* Phillips, 3 Kernan, Rep. 114, on that point.

But it is urged on the part of the defendants, that if this court declares these transactions void, we are giving effect to a law of New Jersey, purely local, and entitled to no extra territorial force. That we enable the State of New Jersey to pronounce, that the State of Michigan shall not take property in New York, which otherwise, by the law of the latter State, it would have a plain right to recover and hold. The case strikes my mind in a very different light.

All the parties to this transaction dealt with a company incorporated by New Jersey, acting in New Jersey, and governed by its laws. The State of Michigan unites with the officers of the Company in violating a law of the State, controlling the Company with which it dealt in the very matter of the transaction between them. That law is so consonant to general principles of policy and justice, that the Legislature of our State have enacted one nearly identical. This Court is asked to aid the State of Michigan in retaining the fruits of its breach of that law; and it is to assist it against one whose title was acquired in exact conformity and obedience to it. So far from the dignity and independence of a tribunal of New York, or the law of New York, being diminished by supporting the plaintiff's claims, a case is presented in which the beneficial and comprehensive doctrine of the comity of States and courts prescribe it, and in which that comity may be observed with a deference far removed from subserviency, and which will infringe no law, regulation, or policy of our own.

For these various reasons, I conclude that the State of Michigan never acquired a title to these securities; that as to property in New York, our courts will look to the defect or invalidity of the claim of that State; that it will lend its aid to the party who appears legally and actually to represent the Morris Canal Company; and that the plaintiff stands in that situation.

I have discussed the case as if it were between the State of Michigan and the plaintiff. It is not contended, I believe, and I do not think it could be successfully, that Thompson's and Fisk's representatives possess any better rights.

The judgment will require some attention to details. The attorney for the plaintiff will submit it for settlement, upon four days' notice, and service of a copy upon the opposite attorneys.

Opinion.

New York Superior Court.

JESSE HOYT,
agst.
HENRY SHELDEN, Ex'r, &c., and others.

Special Term, January, 1857.

W. M. EVARTS, *for plaintiff.*
A. L. JORDAN, *for defendants.*
HOFFMAN, *Justice.*

The final decision in this cause has been suspended until the result of the application for leave to serve a supplemental answer to introduce the release by the plaintiff to George Griswold, and also to

obtain the proof asserted to exist of a by-law of the Morris Canal and Banking Company considered of importance in the cause. The answer being served, the release before me, and the by-laws proved, the cause has been argued upon the effect of these new pieces of evidence, and necessarily has involved a reconsideration of some points before passed upon.

1. The first question I shall consider is as to the operation of the release given by Hoyt to George Griswold, and now set up in the supplemental answer.

The following dates and facts are of importance:

The sale of the securities held by the State of Michigan, and now in question, was made in the month of May, 1843. Griswold had an agreement with Thompson to share with him in the purchase. Thompson became the bidder; in execution of the agreement, Griswold received certain bonds and Thompson other bonds of the Long Island Railroad Company. These bonds were given for portions of the amount of the first bond, probably from some reasons of convenience. But the original mortgage remained as security. Prior to the commencement of this action, that is, prior to the 4th of December, 1847, Griswold transferred to Thompson his bonds, and all his rights and interest under the purchase.

In September, 1851, the demurrer taken by the defendants to the complaint of this action, was decided in Hoyt's favor, by the Court of Appeals.

In June, 1850, Cryder and other persons, creditors of the Morris Canal and Banking Company, upon what was known as sterling bonds, brought an action against some of the Directors of the Morris Canal and Banking Company, and among them George Griswold. They made Mr. Hoyt a party, as claiming to possess those demands against Griswold, and the right to enforce them.

The object of that bill was mainly to make Griswold and the others responsible for certain violations of duty, and to reclaim from them various securities, alleged to have been illegally transferred to them.

In July, 1852, Hoyt answered the original bill, and filed a cross bill. In this he adopted the allegations of the original bill as his own, and he prayed as against Griswold, the relief for himself, which was sought by the parties to such original bill; among other things, that all the securities, bills receivable, choses in action, &c., received by Griswold, and assets of the Company, might be given up to him.

On the 17th of November, 1853, the release in question was executed. It recites Hoyt's ownership of ten of what were called the sterling bonds, of £1000 each; the appointment of receivers in the suit in Chancery in New Jersey, with power to convey all the real and personal estate of the Morris Canal and Banking Company; the assignment by the receivers to Sanxay, for Hoyt's use, of the 16th of May, 1846, of the assets, securities, judgments and property set forth in the schedule annexed to a report made by H. Ford, Master

in Chancery, on the 11th of May, 1846, and confirmed by the Chancellor; then an assignment by Sanxay to himself, of the 19th of December, 1846; the assignment by Richards and Selden, of the 17th of December, 1844, of the various judgments held by them to Sanxay, and his assignment to Hoyt; and assignment by the State of Indiana to Hoyt of its claims upon the Morris Canal Company; the petition of Sanxay to the Chancellor of New Jersey for an order declaring that all the rights of the receivers in and to the assets of the Company as they existed on the 11th of May, 1846, had been conveyed and transferred to him; and the cross bill filed by Hoyt, in October, 1850, in the Cryder suit before mentioned, to which cross bill Griswold was a party, and that the same was undetermined.

It then proceeded,

"And whereas, in order to avoid further litigation in the matter, it has, in view of the premises, and for the consideration hereinafter mentioned, been, and is mutually understood and agreed between the said George Griswold and myself, that all the matters involved in the said controversy, and everything growing out of the same or connected therewith, and all claims and demands of every name and nature which I now have, or may hereafter have against the said George Griswold, or to which I am or may be entitled, whether under the said bonds, judgments, claims, assignments or otherwise, shall be compromised, adjusted, liquidated, and discharged, released and settled, and the said Griswold for ever discharged and released therefrom." It then proceeds with the ordinary operative words of a general release, closing as follows: "which I or my heirs, &c., can or shall have by reason of all or any of the claims, demands, or matters hereinbefore recited or referred to, and each of them; and also by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the date of these presents."

It is to be remembered that Hoyt had become entitled to the Richards and Selden judgments in 1844, and the court in New Jersey authorized a transfer to him by the receivers of the identical securities now in question, and that such an assignment was made on the 13th of November, 1845, together with the long list of other securities contained in the Exhibit H., annexed to the assignment. These transfers were made in payment of the judgments.

First. In the first place what operation had the release as to Griswold, in connection with this claim?

Let it be conceded,

1st. That under the frame of the original bill, this security, if in Griswold's hands, could have been recovered, or any interest he had in it divested. 2d. That Hoyt under his cross bill could have had precisely the same relief as might have been granted upon the original bill.

But how under that bill could there have been any claim upon Griswold? The claim was to the security. That was in Thompson's

hands. Griswold had parted with his right absolutely. It is probable that had he received from the Company something on account, he might have been liable. But without such an allegation, he could not have been a proper party to the suit in 1851, had it been limited to this security. The release then as to him had nothing to act upon, no liability to discharge.

2d. Again: what was the relative position of Thompson and Griswold at the date of the release?

Originally, in 1843, they were joint purchasers of this security. But such relation had entirely terminated. Griswold had sold and assigned his right; had been repaid by Thompson, whatever he had advanced. In no way did they stand as jointly interested, as jointly contracting, or as jointly liable. Without a liability of Griswold, the release could not extend to Thompson, and with a liability of Griswold, there ought to be some union of obligation to make it so extend.

3d. Once more: suppose that in 1851, when that original bill was filed, and at the date of the release in November, 1853, Griswold had retained his interest in the purchase. He would then have been found, with separate bonds of the Long Island Railroad Company in his hands, and a common interest with Thompson in the mortgage. What joint responsibility could have been adjudged to have existed between them, to Hoyt? How could any decision be made except to take from Griswold his bonds, and to transfer his interests in the mortgage; and so from Thompson? But if this must have been the case, then the obligations to Hoyt were several, not joint, nor joint and several. And then the rule applies, that a release of one obligor, only bound severally, will not discharge co-obligors. (The Bank of Poughkeepsie *v.* Ibbotson, 5 Hill Rep. 461.)

4th. And lastly, the case may be presented somewhat stronger than in the last instance, and, I believe, as strong for the defendants as it is possible to frame it. Suppose that at the date of the release the parties had stood precisely as they stood when the purchase was consummated at the auction sale; and, further, that Thompson had executed a written declaration of Griswold's interest in the securities. I do not see that any position of the learned counsel has put the case higher than this. I have a right in this view to assume, that Hoyt was ignorant of Griswold's share or interest in the purchase, when the release was given.

At that period Hoyt had obtained a most important decision in the Court of Appeals in his favor in the present suit, involving the recovery of the security in question from Thompson, and warranting a strong hope of success.

Neither the original bill, nor the cross bill, nor the release, by any word or reference, indicate the existence of the security in question, or any demand of any one upon it, or any interest of any one in it.

I cannot think that, in a Court of Equity, Griswold himself would have been discharged from the liability as to the present security in the case supposed, and we have a right to consider the question as a Court of Equity would do. It has been a rule of such a Court, from the time of Lord Hardwicke at least, that the general terms of a release should be restrained to what was under consideration when it was given. (Cole *v.* Gibson, 1 Vesey Rep. 503; Ramsden *v.* Hylton, 2 Vesey Rep. 304.) In the last case he stated the rule thus: "Notwithstanding the release concludes with general words, yet if given on a particular consideration recited, the law, in order to prevent surprise, will construe it to relate to the particular matter recited which was under the contemplation of the parties, and intended to be released. It is impossible to imply within the general release that which neither party could have had under consideration, and which it is admitted neither side knew of."

This rule was fully rocognized and applied by the Vice-Chancellor in McIntyre *v.* Williamson (1 Edw. Ch. Rep. 35), and in Van Brunt *v.* Van Brunt (3 Edw. Ch. Rep. 17), he again adverted to it, and stated that a release was to be restricted to such matters as upon a fair construction of the whole instrument, shall appear to have been intended by the parties, and within their contemplation at the time. The intention must be ascertained from the deed itself, or the instruments *in pari materia*, containing the agreements and release. (See also Claggett *v.* Johnson, 5 Gill & John. 314; Boyes *v.* Black, 13 Com. B. Rep. 652.)

Some late authorities at common law show also how much the rigor of the former rule on this subject has been relaxed.

Keasely *v.* Coee in the Exchequer, 16 Meeson & Welsby, 128; Owen *v.* Homan, in the House of Lords, 25 Eng. L. & Eq. Rep. 1; and Price *v.* Barker, in the Queen's Bench, 20 Eng. L. & Eq. Rep. 157; definitively settle this point,—that where a creditor executes a covenant not to sue the principal debtor, and reserves his rights against the surety in terms, the latter is not discharged.

Next, these cases settle, that although full words of release are employed in the instrument, yet, if in a subsequent clause there is a reservation importing that the instrument shall not prevent the relessee from suing other persons bound by the obligation, the Court will consider the instrument as merely a covenant to sue, and will mould and limit the general words accordingly. (See also the case of Claggett *v.* Johnson, 5 Gill & John. Maryland Rep. 314.)

The release has not, in my opinion, any operation upon the claim in question.

II. The next subject I shall examine is the effect of the by-law of the Company now introduced into the case.

It was before considered, that under the settled rule of law, no resolution of the directors passed by any number short of a legal quorum, could be valid. The charter had fixed the number of direc-

tors at twenty-three; a majority was of course twelve. The resolutions and acts for transferring the property to the State of Michigan were performed by five or six. They were therefore invalid.

It was suggested at the trial, that there was a by-law authorizing a lesser number to transact business. The case had been left open for the introduction of the release, if the General Term permitted it, and liberty was reserved to the defendant to produce such by-law if it could be traced. That has now been done.

The act of the 5th of March, 1836, amending the charter in its fourth section, provided, that the corporate powers of the Company shall be exercised by a Board of Directors, to consist of twenty-three persons, who shall elect a president and possess the other privileges and powers already conferred by law.

By the 1st section of the original act of the 31st of December, 1824, the ordinary power was given to the Company of adopting such by-laws, ordinances, and regulations as should be judged necessary or convenient for the said corporation, in respect to its canal and banking operations thereinafter mentioned, and the same to alter, repeal, &c.

On the 16th of June, 1836, a set of by-laws was adopted; by the first it was provided, that "*five directors*, of whom the president shall always be one, or in his absence *seven directors* shall form a quorum for the transaction of the *ordinary business of the Company*."

By the second, in the intervals of meetings, the business and affairs of the Company were to be managed by standing and special committees, whose proceedings were to be reported for the approbation of the board.

Various by-laws follow, regulating the offices of president, the appointment and duties of committees, and other matters.

By the 31st of such laws, "no officer, agent, or director of the company without being empowered by the board, shall make any promise, agreement, or any agreement of any kind whatever, purporting to bind the company, or by which its stock, funds, or credit may in anywise be affected."

The authority to manage the concerns of the company, and exercise its powers was vested in a majority of twenty-three persons by the legislature. The power to make by-laws was granted. The stockholders or directors under that power, clothe five directors with authority to transact the *ordinary* business of the company. Did this comprise the power to make the assignments in question? Was that the performance of ordinary business?

At that period the company was undoubtedly insolvent. The bills held by the State of Indiana had been dishonored; one at least, for $50,000, was protested. In March, 1840, the note to Colin Mitchell, for $35,500, had also been protested. I need not refer to other defaults of payment. The assignment was to transfer six hundred thousand dollars of the company's funds, out of a capital of four mil-

lions, to the State of Michigan; to break it up as a corporation, or consummate the work already begun; to defeat the object of its creation; to confer this enormous amount upon a favored creditor; and to violate the policy and law of the State of New Jersey. Had the whole board of twenty-three directors convened and performed this act, I should have held it void. It must inevitably fall when this small delegation of a delegation have attempted it.

It follows in my opinion that the State of Michigan acquired no better title by the force of this by-law than it possessed without it. And I cannot forbear to repeat the great principle and rule, that a party taking a transfer of property from a corporation or its agents, is bound to know the extent of their chartered powers, and of their servant's authority.

III. There remains one point to be considered, to which I called the attention of Counsel; it is whether the purchasers from the State of Michigan can stand in a better situation than that State itself. On the previous argument this point was but slightly noticed.

The presiding Judge in the Court of Appeals disposes of this question by stating that the transfer to the State was utterly void, not merely voidable—being made without authority it conveyed no title. The corporation could impeach it, or in connection with the insolvency, it could be impeached by creditors, with the same effect as if the transfers were forgeries. Thompson acquired nothing from the State of Michigan, because the latter had nothing to give.

Mr. Justice Paige inclines strongly to the opinion, that had the State of Michigan advanced money at the time upon the transfer of the securities, it would have been protected; but as it took them for an antecedent debt, and merely as collateral security, the Company was not estopped. He then observes that as the defendant, Thompson, had notice of the title of the State of Michigan, at the time he purchased, he was entitled to no other right. This was alleged in the bill. He adds that the other Judges concurred in the opinion that the judgment should be reversed, on the ground that the assignments were executed without the authority of the directors.

The question now is, whether the case as to Thompson is varied upon the testimony, within the rule of Justice Paige, or upon any other principle.

Thompson gave $20,000 at public action for securities worth on their face, and in fact, $40,000.

The agent of the State of Michigan applied to Thompson to purchase them before the auction. Griswold acted with such agent on behalf of the State. The agent communicated with Thompson at his own office, and in that of Mr. Strong, his counsel.

The agent exhibited to Thompson a copy of the agreement of December, 1840, between the State of Michigan and the Morris Canal Company. It was shown also to Mr. Strong.

The State of Michigan refused to guarantee either its title, or the solvency of the Morris Canal Company. It sold only what right it had. It refused a guarantee; this was fully explained to Thompson.

The papers and documents relating to the claim of Michigan were examined in the office of Strong or Thompson, or in both of said offices. They were printed among the public documents of the State of 1840 or 1841.

We have thus a speculating purchaser of a bond and mortgage (not of negotiable paper), led directly and fully up to the source of his assignor's title, which was utterly void. This was in May, 1843. In September, 1841, the Company had ceased to do business as a corporation. Richards and Selden's bill of complaint had been filed late in 1841, and in January, 1843, the decree for the appointment of receivers, and adjudging that the Company was insolvent, was pronounced. The public documents, placed in Thompson's or his counsel's hands, contained an allegation of such insolvency, and sought to arrest the acts of the corporation, on that very ground.

I confess, I never met with a case in which the doctrine of a constructive notice more clearly applies, even assuming that it does not come up to one of actual notice. See Frazer *v.* Western, 1 Barbour Chy. R. 220, &c., reported in Court of Appeals, 1 Howard Appeal Cases, 449.

It is observed in the late case of Ware *v.* Egmont (31 Eng. L. & Eq. Rep. 97; In Ch. 7, 1854), that judges of great eminence have of late years held, that the doctrine of constructive notice, ought not to be extended. Where a person has any actual notice of any matter of fact, there can be no danger of doing injustice, if he is held to be bound by all the consequences of that which he knows to exist. But where he has not actual notice, he ought not to be treated as if he had, unless the circumstances are such as to enable the Court to say, not only that he might have acquired, but also that he ought to have acquired, the information with which it is sought to affect him; that he would have acquired it but for his gross negligence in the conduct of the business in question.

There is no latitude of this rule which will protect Thompson, when the State of Michigan could not sustain the claim.

The result is, that the judgment must be for the plaintiff. The attorneys will submit it for settlement.

At a General Term of the Superior Court of the City of New York, held at the City Hall in said city on the 3d day of July, 1858.

Present:

Hon. Joseph S. Bosworth,
Hon. Lewis B. Woodruff.

JESSE HOYT
v.
HENRY SHELDEN, Executor of Abraham G. Thompson, deceased, and The Long Island Railroad Company, and Honora Fisk, William H. Bolton, and David B. Baylis, Executors of George B. Fisk, deceased, Digby V. Bell, formerly Auditor-General, George B. Cooper, formerly Treasurer, and Gideon O. Whittemore, formerly Secretary of State, of the State of Michigan.

This cause coming on to be heard at a General Term of this Court, held at the December Term, 1857, by the justices Bosworth and Woodworth, upon an appeal by the said defendants, Henry Shelden, executor, &c., and the Long Island Railroad Company, for the judgment rendered herein at a special term before the Hon. Murray Hoffman, in favor of the plaintiff on the 12th day of February, 1857, which payment was entered on the 4th day of March, 1857. The judgment-roll being filed on that day, and subsequently refiled on the 4th day of April, 1857.

And upon hearing Ambrose L. Jordan and George Wood, Esquire, of counsel for the appellants, and Skeffington Sanxay and Jesse Hoyt, Esquires, of counsel for the respondent, and due deliberation being had, it is now ordered and adjudged that the said judgment of the special term be and it hereby is reversed and vacated. And a new trial is hereby ordered in this action, the costs to abide the event thereof.

GEORGE T. MAXWELL, *Clerk.*

Filed July 19th, 1858.

New York Superior Court.

JESSE HOYT, plaintiff and appellant,
against
HENRY SHELDEN, executor of Abraham G. Thompson, deceased, and The Long Island Railroad Company, respondents, in a certain action in which the said respondents and Honora Fisk, William H. Bolton, and B. Baylis, executors of George B. Fisk, deceased, Digby V. Bell, formerly Auditor-General, George B. Cooper, formerly treasurer, and Gideon O. Whittemore, formerly Secretary of State of the State of Michigan, are defendants.

Gent: Please to take notice that the above-named appellant, Jesse

Hoyt, appeals to the Court of Appeals of the State of New York, from the judgment of the General Term of this Court, made on the 3d day of July, 1858, and the order made thereon dated that day, whereby it is "ordered that the judgment of the Special Term be and it hereby is reversed and vacated, and a new trial is hereby ordered in this action," &c.

And the said appellant, Jesse Hoyt, hereby assents, that if the said order of said General Term for a new trial be affirmed, that judgment absolute shall be rendered against the said appellant.

Dated New York, July 26, 1858.

Yours, &c.,
S. SANXAY,
Attorney for plaintiff and appellant, J. Hoyt.

To GEORGE T. MAXWELL,
Clerk of the Superior Court.
WEEKS & DE FOREST,
Attorneys for Long Island Railroad Co.
THEODORE C. SEARS, Esq.,
Attorney for Henry Shelden.

Filed July 27, 1858.

State of New York, ss.

Pleas in the Court of Appeals, held at the Capitol in the city of Albany, on the 31st day of December, in the year of our Lord one thousand eight hundred and fifty-eight, before the Judges of the said Court.

Witness, Alexander S. Johnson, Esquire, Chief Judge.

R. F. HICKS, [L. S.]
Clerk.

JESSE HOYT, appellant,
v.
HENRY SHELDEN, Executor, &c., of Abraham G. Thompson, deceased, respondent.

Be it remembered, that on the 20th day of August, in the year of our Lord one thousand eight hundred and fifty-eight, the appellant in this action came here, into the Court of Appeals, by S. Sanxay, his attorney and counsel, and filed in the said Court his notice of appeal and return thereto from a judgment of the New York Superior Court. And the respondent in said action afterwards appeared in said Court of Appeals, by Theodore C. Sears, his attorney, and A. L. Jordan, his counsel; which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said Court of Appeals, after having heard this action argued by Mr. S. Sanxay, counsel for the appellant, and by

Mr. A. L. Jordan, counsel for the respondent, and after due deliberation having been had thereon, did order and adjudge, the appellant having stipulated that if the of the General Term for a new trial be affirmed, that judgment absolute be rendered against him; and it appearing that no error has been committed in granting a new trial, that judgment final be rendered against the plaintiff with costs, in pursuance of the said stipulation of the plaintiff in his notice of appeal to this Court.

It was also ordered, that the record and proceedings be remitted to the New York Superior Court, there to be proceeded upon according to law.

Therefore it is considered that judgment final be rendered against the plaintiff with costs.

And hereupon, as well the notice of appeal and return thereto aforesaid, as the judgment of the Court of Appeals aforesaid, by them given in the premises, are by the said Court of Appeals remitted unto the Superior Court of the City of New York, before the Justices thereof, according to the form of the statute in such cases made and provided, to be enforced according to law, and which record now remains in the said Superior Court, before the Justices thereof, &c.

R. F. HICKS, *Clerk.*

COURT OF APPEALS,
Clerk's Office, Albany, January 10, 1859.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the Court of Appeals, with the papers originally filed therein attached.

R. F. HICKS, *Clerk.*

At a term of the Superior Court of the City of New York, held at the City Hall in the city of New York, on the 11th day of July, 1859.

Present, Hon. Edwards Pierrepont, Justice.

JESSE HOYT
v.
HENRY SHELDEN, Executor, &c., of Abraham G. Thompson, deceased, impleaded with THE LONG ISLAND RAILROAD COMPANY, and others, defendants.

On reading and filing the remittitur from the Court of Appeals of the State of New York in this cause, and on motion of Theodore C. Sears, attorney for said defendant,

It is ordered, that the judgment of the said Court of Appeals be, and the same is hereby, made the judgment of this Court, and further,

that judgment final be rendered against said plaintiff, and that his bill of complaint herein be dismissed with costs, so to be taxed.

Enter E. P.

Filed July 11, 1859.

United States of America, *ss.*

To HENRY SHELDEN, Executor of ABRAHAM G. THOMPSON, deceased, and the LONG ISLAND RAILROAD COMPANY. Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the office of the clerk of the Court of Appeals of the State of New York, wherein Jesse Hoyt is plaintiff in the Court below, and appellant in the Court of Appeals, and you are defendants in the Court below, and respondents in the Court of Appeals, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 6th day of July, A.D. 1859.

Given under my hand at Cooperstown the 6th day of July, A.D. 1859, and of the Independence of the United States the eighty-fourth.

S. NELSON.

City and County of New York, *ss.*

Edward J. McGean, of said city and county, being duly sworn, says that on the 24th day of August, A.D. 1859, he served a copy of the foregoing citation upon Henry Shelden, Esq., within named, by delivering the same to him personally, and leaving the same with him. Deponent further says that such person was known to him to be the same person named in the within citation. Deponent further says that, at the time of such service, he showed to said Henry Shelden the within original.

J. J. McGEAN.

Sworn to before me December 10th, 1859.

LEONARD W. GODDARD,
Notary Public.

Due form is admitted of papers above-mentioned.

THE LONG ISLAND RAILROAD COMPANY,
by WATERS.

We admit due service of a copy of the within citation.

WEEKS & DE FOREST,
Attorneys of Counsel for Long Island Railroad Com.

Indorsed: Supreme Court of the United States. Jesse Hoyt against Henry Shelden, executors, &c., and the Long Island Railroad Company. Citation and proof of summons. J. Hoyt, attorney for plaintiff in error. To the clerk of the Superior Court. Received, December 16th, 1859.

United States of America, *ss.*

The President of the United States of America to the Superior Court of the City of New York, being possessed of the record and proceedings upon a remittitur from the Court of Appeals of the State of New York. Greeting:

Because in the said record and proceedings, and also in a rendition of a judgment in a plea in the said Court of Appeals now before you, between Jesse Hoyt, appellant, and Henry Shelden, executor of the last will and testament of Abraham G. Thompson, deceased, and the Long Island Railroad Company, respondents, manifest error hath happened to the great damage of the said Hoyt, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid on his behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you may have the same at Washington on the first Monday of December next in said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this first Monday of December, A.D., 1858, and of the Independence of the United States the eighty-fourth.

KENNETH G. WHITE,
Clerk.

J. HOYT,
Attorney for Plaintiff.

Indorsed: Supreme Court of the United States. Jesse Hoyt against Henry Shelden, executor of Abraham G. Thompson, deceased, and The Long Island Railroad Company. Writ of error to the Court of Appeals of the State of New York. J. Hoyt, attorney for plaintiff in error. The within writ of error is allowed, and the clerk is authorized to issue the same on filing bond approved by me, dated July 6th, 1859. T. Nelson. Received, 1st, 1859.

United States of America, *ss.*

The President of the United States of America to the Superior Court of the City of New York, being possessed of record and proceedings upon a remittitur from the Court of Appeals of the State of New York. Greeting:

Because in the said record and proceedings, and also in the rendition of a judgment in a plea in the said Court of Appeals, now before you, between Jesse Hoyt, appellant, and Henry Shelden, executor of the last will and testament of Abraham G. Thompson, deceased, and The Long Island Railroad Company, respondents, a manifest error hath happened to the great damage of the said Hoyt, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you may have the same at Washington on the first Monday of December next in said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this first Monday of December, A.D. 1838, and of the Independence of the United States the eighty-fourth.

KENNETH G. WHITE,
Clerk.

J. HOYT,
Attorney for Plaintiff.

The answer of the Justices of the Superior Court of the City of New York to the within writ, shows that they hereby send annexed hereto the record and proceedings, and also the rendition of judgment, and all things concerning the same in the action named within, together with the citation, and the copy of this writ, also this writ, to the Justices of the Supreme Court of the United States at the City of Washington, pursuant to the command contained herein, which said judgment of the Court of Appeals was rendered on the thirty-first day of December, 1858.

In witness whereof, the said Justices of the Superior Court of the City of New York have caused the seal of their [SEAL.] said Court to be affixed hereto, and the same to be signed by the clerk of the said Superior Court at the

City Hall, in the City of New York, this sixteenth day of December, A.D. 1859.

GEORGE T. MAXWELL,
Clerk.

Indorsed: Supreme Court of the United States. Jesse Hoyt against Henry Shelden, Executor of Abraham G. Thompson, deceased, and The Long Island Railroad Company. Writ of error to the Court of Appeals of the State of New York. J. Hoyt, attorney for plaintiff in error. The within writ of error is allowed, and the clerk is authorized to issue the same on filing bond approved by me, dated July 6th, 1859. T. Nelson. Received, December 16th, 1859.

5 b 5 2

SUPREME COURT OF THE UNITED STATES.

No. 151.

LEWIS H. MEYER AND EDWIN STUCKEN, CLAIM'TS OF THE STEAMER ST. LAWRENCE, HER TACKLE, &c., APPELLEES,

vs.

WILLIAM W. TUPPER AND EDWARD R. WILCOX.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this [SEAL.] twenty-first day of November, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the said United States the eighty-fourth.

KENNETH G. WHITE, *Clerk.*

1 At a stated term of the district court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Tuesday, the twenty-sixth day of January, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable Samuel R. Betts, an associate justice of the Supreme Court of the United States.

WILLIAM W. TUPPER et al.
v.
THE STEAMSHIP ST. LAWRENCE, her tackle, Meyer & Stucken, claimants.

1855, Dec. 21. The libellants file their libel in the words and figures following, to wit:

2 To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel of William W. Tupper and Edwin R. Wilcox against the steamer St. Lawrence, respectfully shows:

First. That this is an action founded upon contract, civil and maritime, and said vessel is now in this district.

Second. That libellants furnished to said vessel, and to render her seaworthy, supplies to the amount of twenty-five hundred dollars.

Third. That payment has been demanded and refused.

Fourth. That all and singular the premises are true;
3 wherefore the libellants pray for process of attachment, and that the said court would be pleased to pronounce for the claim aforesaid, and costs for such relief as may be just.

E. R. WILCOX.

Sworn to before me this 21st day of December, 1855.

JOSEPH BRIDGHAM,
U. S. Com.

C. E. BIRDSALL, *Lib't's Proctor.*

Endorsed: U. S. district court. 13. 189. Wm. W. Tupper and al. vs. The Steamship St. Lawrence, her engine, &c. Libel. C. E. Birdsall, lib. proct.
Filed 21 Dec., 1855.

District Court of the United States for the southern district of New York.

4 Filed the 21st day of Dec., 1855.

Stipulation for Libellant's Costs entered into pursuant to the Rules and Practice of this Court.

Whereas a libel was filed in this court, on the 21 day of Dec., in the year of our Lord one thousand eight hundred and fifty-five, by Wm. W. Tupper et al. against the steamship St. Lawrence, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamship may be condemned
5 and sold to pay the demands of the libellant, and the said libellants, and W. B. Beebe, surety, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named
6 shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or in case of appeal, by the appellate court.

W. R. BEEBE.
WM. TUPPER,
By W. R. BEEBEE, *his Att'y.*

Taken and acknowledged, this 21st day of Dec., 1855, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

W. R. Beebe, party to the above stipulation, being duly sworn, doth depose and say, that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and
7 above all his just debts and liabilities.

to this 21st day of Dec., 1855, before me.

JOSEPH BRIDGHAM, *U. S. Commissioner.*

Recorded the 21 day of Dec'r, 1855.

G. T. B. *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss.*

The President of the United States of America to the Marshal of the Southern District of New York, greeting:

Whereas a libel hath been filed in the district court of
8 the United States for the southern district of New York on the twenty-first day of December, in the year of our Lord one thousand eight hundred and fifty-five, by William W. Tupper and Edwin R. Wilcox against the steamer St. Lawrence, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamer or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the
9 said steamer or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said steamer or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern
10 district of New York, on the eighth day of January next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

11 Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this twenty-first day of December, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the eightieth.

GEO. F. BETTS, *Clerk.*

CHAS. E. BIRDSALL,
Proctor for Libellant.

In obedience to the within monition, I attached the steamship St. Lawrence therein described on the 21 day of December, and have given due notice to all persons claiming the same, that this court will, on the day of , inst., (if that day should be a day of jurisdiction; if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

AB'M T. HILLYER,
U. S. Marshal.

Dated Jan'y 8th, 1856.

[*Endorsed:*]

Vol. 13, page 189. Southern district of New York. United States district court. William W. Tupper et al. vs. the steamer St. Lawrence, her tackle, &c. Monition ret'ble 8th January, 1856. C. E. Birdsall, proctor for libellant. Filed 8 January, 1856.

I hereby depute G. Weks to execute the within process. Dated , 18 .

ABRA. J. HILLYER,
U. S. Marshal.

At a stated term of the district court of the United States of America for the southern district of New York, held at
13 the City Hall, in the city of New York, on Saturday, the twenty-second day of December, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honorable Samuel R. Betts, district judge.

THE STEAMER ST. LAWRENCE, her tackle, &c., asm.
WILLIAM W. TUPPER & al.

And now Edward Stucken, intervening for the interest of himself and Lewis H. Meyer, appears before the honorable court, and makes claim to the said steamer St. Lawrence, her tackle, &c., as the same are attached by the marshal, under process of this
14 court, at the instance of William W. Tupper, and the said Edwin Stucken avers that he was in possession of the said vessel, her tackle, &c., at the time of the attachment thereof, and that the persons above named are the true and bona fide owners of the said steamer, her tackle, &c., and that no other person is the owner thereof; and the said Edward Stucken is the true and lawful bailee thereof, as an owner; wherefore he prays to defend accordingly.

EDWARD STUCKEN.

Sworn to and subscribed this 22d day of December, A. D. 1855, before me.

GEO. W. MORTON,
15 *U. S. Commissioner.*

A. MORTON, *Proctor for Claimant.*

[*Endorsed:*]

Vol. 13, No. 189. United States district court for the southern district of New York. The steamship St. Lawrence, &c., asm. Wm. W. Tupper and E. R. Wilcox. Thadd's H. Lane, proctor for claimant. Claim of Edward Stucken.

Filed the twenty-second day of December, 1855.

District Court of the United States for the Southern district of New York.

Filed the twenty-second day of December, 1855.

Stipulation entered into pursuant to the Rules and Practice of this Court.

Whereas a libel was filed in this court on the 21st day of De-
16 cember, in the year of our Lord one thousand eight hundred and fifty-five, by William W. Tupper and Edwin R. Wilcox, against the steamer St. Lawrence, &c., for the reasons and causes in the said libel mentioned, and praying that said steamer may be condemned and sold to pay the demands of the libellants, and the parties hereto hereby consenting that, in case of default or contumacy on the part of the , or sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels and lands:

17 And whereas, also, a claim has been filed in said cause by Edwin Stucken:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or upon an appeal, by the appellate court.

EDWARD STUCKEN,
RICHARD POILLON,
JOHN GRAHAM.

Taken and acknowledged this 22d day of December, 1855, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

John Graham and Richard Poillon, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he resides in the southern district of New York; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

RICHARD POILLON,
JOHN GRAHAM.

Sworn to this 22 day of December, 1855, before me.

GEO. W. MORTON,
U. S. Commissioner.

District Court of the United States of America, for the Southern district of New York.

Filed the 22d day of December, 1855.

Know all men by these presents, that we, Edward Stucken, John Graham and Richard Pillon, are held and firmly bound unto Abraham T. Hillyer, marshal of the United States for the southern district of New York, in the sum of five thousand dollars, to be paid to the said Ab'm T. Hillyer, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-second day of December, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the twenty-first day of December, in the year of our Lord one thousand eight hundred and fifty-five, by Wm. W. Tupper, Wilcox, libellants against the steamship St. Lawrence, for the sum of twenty-five hundred dollars, on which process of attachment has issued, and the said steamship St. Lawrence is in custody of the marshal under the said attachment, and Edward Strucken has applied for a discharge of said steamsh. St. Lawrence from the custody of the marshal, and has filed a claim claiming the said steamship as owner, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court: Now, therefore, the condition of this obligation is such, that if the above bounden Edward Stucken shall abide by and perform the decree of this court, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

EDWARD STUCKEN,
RICHARD POILLEN,
JOHN GRAHAM.

Sealed and delivered, and taken and acknowledged, this 22d day of December, 1855, before me.

GEO. W. MORTON,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern district of New York, ss.

John Graham and Richard Poillon, being duly sworn, depose and say, and each for himself saith, that he resides in the southern

district of New York; that he is worth the sum of ten thousand dollars, over and above all his just debts and liabilities.

RICHARD POILLEN,
JOHN GRAHAM.

Sworn to, this twenty-second day of December, 1855, before me.

GEO. W. MORTON,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond. Dated this twenty-second day of December, 1855.

SAM. R. BETTS.

Recorded the 22d day of December, 1855.

GEO. F. BETTS, *Clerk.*

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Saturday, the twenty-second day of December, in the year of our Lord one thousand eight hundred and fifty-five: present, the Honorable Samuel R. Betts, district judge.

THE STEAMSHIP ST. LAWRENCE, her tackle, &c., asm.
WILLIAM W. TUPPER.

On filing claim and stipulation for claimant's costs, together with a bond under the act of Congress, in double the amount claimed, approved by the district judge. On motion of Thaddeus H. Lane, esq., proctor for the claimant, it is ordered, that a copy of this order be delivered to the marshal.

[*Endorsed:*]

Vol. 13, No. 189. United States District Court, for the southern district of New York. The Steamship St. Lawrence, &c., asm. William W. Tupper et al. T. H. Lane, proctor for claimants. Order to marshal. Filed the 22d day of December, 1855.

At a stated term of the district court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Wednesday the 26th day of December, in the year of our Lord one thousand eight hundred and fifty-five: present, the Honorable Nathan K. Hall, an associate justice of the Supreme Court of the United States.

WM. W. TUPPER et al.
vs.
THE ST. SHIP ST. LAWRENCE, her tackle, &c. } 13. 189.

On reading and filing the mandate of the district judge, and on motion of C. E. Birdsall, proctor for the libellants, it is ordered, that notice for all persons to appear and intervene for their interest in the above entitled cause be published by the marshal until the eighth day of January, 1856.

To the Honorable Samuel R. Betts, judge of the District Court of the United States for the Southern district of New York:

The answer of Lewis H. Meyer and Edward Stucken, claimants of the steamer St. Lawrence, to the libel of William W. Tupper and al., respectfully shows:

First. That these respondents, on information and belief, deny the allegations in the libel and each and every of them.

Second. That these respondents further answering, say that all the materials and articles stated in the libel were furnished on the credit of one John Graham, and not of the said vessel.

Third. And these respondents further answering, say that after the alleged furnishing of all the materials stated in the libel, the said libellants accounted and settled with the said John
28 Graham for and on account thereof, and the libellants took and received payment for the amount then agreed on, and discharged the said vessel.

Fourth. That these respondents are bona fide purchasers in good faith of said vessel, without notice of the libellant's claim.

Fifth. That all and singular the premises are true.

Wherefore respondents pray that the libel may be dismissed, with costs to be taxed.

EDWARD STUCKEN.

Sworn to before me, this 10th day of April, 1856.

A. C. WESTERVELT,
Notary Public, New York.

Advocate.

Endorsed: 13, 189. U. S. District Court. The Steamship St. Lawrence, her tackle, &c., ads. William W. Tupper and al.

Answer.

THAD'S H. LANE,
Proctor for Claim'ts.

Filed April 21, 1856.

U. S. District Court.

TUPPER, &c.,
vs.
STEAMSHIP ST. LAWRENCE.

I consent that Messrs. Williams & Barnarn be substituted as proctors for libellants herein.

Dated April 21, 1856.

C. E. BIRDSALL.

Endorsed: 13. 198. U. S. District Court. William H. Tupper and Edwin R. Wilcox vs. The Steamship St. Lawrence, her engine, &c.

Substitution.

WILLIAMS & BARNARD,
Lib'ts' Proctor, 11 *Wall st.*

30 Filed April 25, 1856.

At a stated term of the district court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Friday, the 25th day of April, in the year of our Lord one thousand eight hundred and fifty-six.

Present, the Honorable Nathan K. Hall, an associate justice of the Supreme Court of the United States.

W. W. TUPPER et al.
vs.
STEAMER ST. LAWRENCE. } 13. 189.

On filing a consent signed by the proctor for the libellant, it is ordered that Messrs. Williams & Barnard be substituted for the libellants in the place and stead of C. E. Birdsall.

Endorsed: Filed 25th April, 1856.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the southern district of New York:

The replication of William H. Tupper and Edwin R. Wilcox, libellants, to the answer of Lewis H. Meyer and Edward Stucken, claimants of the steamer St. Lawrence, her engine, tackle, &c., alleges that the said libellants will aver, maintain and prove their libel to be true, certain and sufficient, and that the said answer of the said claimants is uncertain, untrue and insufficient, and they humbly pray, as in and by their said libel they have always prayed.

WILLIAMS & BARNARD,
Libell'ts' Proctor, 11 *Wall st.*

Endorsed: 13. 189. U. S. district court S. district of New York. William H. Tupper et al. vs. The Steamer St. Lawrence, her engine, &c. Replication. Williams & Barnard, lib'ts' proctors, 11 Wall st. Filed June 12, 1856.

At a stated term of the district court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Wed-

nesday, the 17 day of December, in the year of our Lord one thousand eight hundred and fifty-six.

Present, the Honorable Samuel R. Betts, an associate justice of the Supreme Court of the United States.

WILLIAM W. TUPPER et al.
vs.
THE STEAMSHIP ST. LAWRENCE, her tackle, &c. } 13. 189

34 This cause being called in its order on the calendar, on motion of Messrs. Williams & Barnard, proctors for the libellants, the proctors for the claimants appearing and consenting thereto, it is ordered that it be referred to a commissioner of this court to ascertain and compute the amount due the libellants, and report thereon to this court with all convenient speed.

And it is further ordered that any questions of law that may arise on said reference be reserved for the consideration of the court.

(Signed) SAM'L R. BETTS.

Endorsed: Filed 17th December, 1856.

At a stated term of the district court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Tuesday, the 20th day of January, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Samuel R. Betts, an associate justice of the Supreme Court of the United States.

WILLIAM W. TUPPER et al.
vs.
THE STEAMSHIP ST. LAWRENCE, her tackle, &c. } 13. 189.

36 Joseph Bridgham, U. S. commissioner, brings into court the report made by him in the above entitled cause.

Ordered that said report be filed, and that the libellants and claimants each have four days from this day to file their exceptions thereto.

District Court of the United States for the Southern district of New York.

WILLIAM W. TUPPER et al.
vs.
THE STEAMSHIP ST. LAWRENCE, her tackle, &c. } Commissioner's Report.

In pursuance of a decretal order made in the above entitled cause, on the seventeenth day of December, in the year of our Lord one thousand eight hundred and fifty-six, by which,
37 among other things, it was referred to the undersigned,

one of the commissioners of this court, to ascertain and compute the amount due the libellants for supplies, &c., and to report thereon to this court with all convenient speed, I, Joseph Bridgham, the commissioner to whom the matter was referred, do report that I have been attended by the proctor for the libellants and claimants, and have taken and examined the testimony offered in support of the libellants' claim, supplies, &c., and do find that there is due to the libellants the sum of eighteen hundred and thirty-three $\frac{07}{100}$ dollars, with interest thereon, from December 21st, 1855, amounting to one hundred and thirty-nine dollars, in all amounting to the sum of nineteen hundred and seventy-two $\frac{07}{100}$ dollars.

38

Dated the twentieth day of January, A. D. 1857.

All which is respectfully submitted.

JOSEPH BRIDGHAM,
U. S. Commissioner.
WILLIAMS & BARNARD,
Proctors for Libellant.

[*Endorsed:*]

Vol. 13, No. 189. United States district court for the southern district of New York. William W. Tupper et al. vs. The Steamship St. Lawrence, her tackle, &c. Williams & Barnard, proctors for libel't. Commissioner's report.

Filed the 20 day of Jan'y, 1857.

U. S. District Court.

STEAMSHIP ST. LAWRENCE
ads.
WILLIAM W. TUPPER et al.

Exceptions to the Report of the Commissioner herein.

First. That the report of the commissioner is against the law and evidence in the cause.

Second. That there is no evidence on which to sustain the finding of the commissioner.

Third. That the evidence in the cause shows that the report should have been against the libellants.

THAD'S H. LANE,
Proctor for Resp't.

Jan'y 24, 1857.

Endorsed: 13. 189. U. S. District Court. Tupper vs. Steamer St. Lawrence.

Personal service of a copy of the within admitted, Jan'y 26, 1857.

WILLIAMS & BARNARD,
Libellants' Proctors.

At a stated term of the district court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall in the city of New York, on Wednesday, the 23d day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable , an associate justice of the Supreme Court of the United States.

WILLIAM W. TUPPER et al.
vs.
THE ST'SHIP ST. LAWRENCE, her tackle, &c. } 13. 189.

This cause coming on to be heard on exceptions to the commissioner's report, ordered hearing.

Evidence for libellants.

(See p. 18.) Deposition of Smith Crooker, read.
(" 19, 20.) " Welcome R. Beebe, "
(" 20.) " William F. Perkins, "

Mr. Williams argues for the libellants.
Mr. Dean " claimants.
C. A. V.

United States District Court, Southern Dist. of New York.

WILLIAM W. TUPPER et al.
vs.
THE STEAMSHIP ST. LAWRENCE, her tackle, &c. } 13. 189. Testimony on Reference.

Dec. 19, 1856.

Smith Crooker sworn. I know the St. Lawrence, and I was in the employ of Capt. Graham, on board of her, from July, 1855, to the time she went to sea on the 22d December following. I
42 was a ship-joiner, and did the joiner's work on board of her. I was boss joiner, and it was my business to examine bills for lumber and certify them. The bills annexed, marked exhibit A and B, are certified by me, and are correct in point of date, amount and value, and were had as therein specified, and were all used in and about the work of the St. Lawrence, and were necessary for the repairs and alterations then being done. I was employed to oversee the work by Capt. Graham, who was the owner of the St. Lawrence.

Cross-examination.

The ship was lying a part of the time at 9 st., and a part
43 of the time at 10 st. All the lumber charged in exhibit A and B was furnished to the St. Lawrence. Checks were given when the lumber was received, and they correspond with the charges in the bill. None of the articles charged were for the

Ocean Bird, nor for any other vessel. All used for the St. I think
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whether any such notes were given. This I know only th Beebe
Captain Graham. ayable

Redirect. m day

This remark of the Capt., that the parties should take note
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other vessels. nd in-

(Interest is claimed by the liblts. from the time of filing l

SMITH CROOKE

	Dr.
Adjourned to Wednesday, Dec. 24, at 9½ o'clock a. m.	85
Wednesday, Dec. 24, 1856.	1 13
Adjourned to Saturday, Dec. 27, 1856, at 10 o'clock a. m.	70
Saturday, Dec. 27, 1856.	84 36
	48 08
Parties meet pursuant to adjournment; no testimony taken;	3
journed to Jan'y 7, 1857.	23 44
Wednesday, Jan'y 7, 1857.	70
	75
Parties meet, and adjourned to Jan'y 9, 1857, at 10 o'clock a	4 90
Friday, Jan'y 9, 1857.	10 94
Parties appear; examination continued on part of libellants	9 94
Welcome R. Beebe sworn. I know the libellants	1 13
46 claimants in this suit. At the time of the sale of the St. L	0 94
rence to Meyer and Stucken on 5 Dec., 1855, they ag	38
to pay certain liens; Capt. Graham, who was the previous ow	1
was to give the orders on Meyer & Stucken, and liquidate	75
amounts, and the orders were to pass through my hands, and	4
countersigned by me before Meyer & Stucken paid them; they w	2 50
to be submitted to me to determine if they were liens. Mes	1 13
Tupper & Wilcox, by Tupper, called on me in pursuanc	7 79
47 that arrangement with an order for 600 and odd dollars	4 40
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the amount of the claim had been which he held, I think, ag	1 50
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48 ence between the amounts of their bills and	50
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At a stated term of the district court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall in the city of New York, on Wednesday, the 23d day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

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Ocean Bird, nor for any other vessel. All used for the St. Lawrence. None of the items in exhibit A & B have been paid to my knowledge. They may have been paid and I not know it. There was an agreement made between Capt. Graham and the li-
44 bellants, that as the articles furnished should amount to sufficient sums, that notes should be given. I don't know whether any such notes were given. This I know only through Captain Graham.

Redirect.

This remark of the Capt., that the parties should take notes, related to the Ocean Bird, and I don't know that it related to the other vessels.

(Interest is claimed by the liblts. from the time of filing libel.)

SMITH CROOKER.

Adjourned to Wednesday, Dec. 24, at 9½ o'clock a. m.

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Parties meet pursuant to adjournment; no testimony taken; adjourned to Jan'y 7, 1857.

Wednesday, Jan'y 7, 1857.

Parties meet, and adjourned to Jan'y 9, 1857, at 10 o'clock a. m.

Friday, Jan'y 9, 1857.

Parties appear; examination continued on part of libellants.

Welcome R. Beebe sworn. I know the libellants and
46 claimants in this suit. At the time of the sale of the St. Lawrence to Meyer and Stucken on 5 Dec., 1855, they agreed to pay certain liens; Capt. Graham, who was the previous owner, was to give the orders on Meyer & Stucken, and liquidate the amounts, and the orders were to pass through my hands, and be countersigned by me before Meyer & Stucken paid them; they were to be submitted to me to determine if they were liens. Messrs.
Tupper & Wilcox, by Tupper, called on me in pursuance of
47 that arrangement with an order for 600 and odd dollars for me to countersign. and to examine whether it was a lien. Then Tupper went on and told me what it was for; he told me what the amount of the claim had been which he held, I think, against the St. Lawrence—it might have been against the St. Lawrence and Ocean Bird—and that it had been $2,500; he told me they had settled with Capt. Graham, and taken his notes for the differ-
48 ence between the amounts of their bills and the order referred to, and brought for me to countersign, and had re-

ceived that order as the balance of their bill. That order was, as near as I recollect, in these words; it was dated two or three days after the sale, and was in substance—

Mess. Meyer & Stucken will please pay to Messrs. Tupper & Wilcox six hundred and dollars in full for all their claims against the steamships Ocean Bird and St. Lawrence, and United States, and oblige yours, &c.

JOHN GRAHAM.

Mr. Tupper made some inquiries of me about Graham's pecuniary responsibility, and I gave him my views on the subject.
49 He wanted to know, then, whether he could not get his whole bill against the steamer. I asked him if, in taking this order and the notes, he had given Graham a receipt in full, and my impressions are, that he told me he had, but on that my mind is not clear. I then told him he could try the experiment; he could be no worse off than he was now. He determined then not to present the order, but libel for the whole.

Cross-examined.

He did, in fact, libel for the whole $2,500; I remember
50 distinctly that he had two bills, but whether they were against the St. Lawrence and the Ocean Bird, or against the St. Lawrence and the United States, my mind is not clear, and my mind is not clear as to whether the $2,500 included the balance of both bills or not; but if I had been asked without looking at the libel, I should have said the St. Lawrence bill was $1,800, but looking at the libel shakes my confidence in my recollection.

(The amount claimed in the order is admitted to be a lien.)

W. B. BEEBE.

William F. Perkins sworn. I was, during the summer, autumn and winter of 1855, the confidential clerk of Capt. Graham; I know Mr. Tupper & Wilcox; I was present at the time notes were given for bills marked Ex. A and B.

Q. State what was the bargain and agreement between Tupper & Wilcox and Capt. Graham at the time these nots were given.

(Obj. to, on the ground that the agreement or tenor of the order cannot be varied or explained by parole evidence.)

A. At the time the notes were given Mr. Wilcox was
52 present; he asked Capt. Graham if, by taking those notes, it would waive his right to a lien upon the St. Lawrence; Capt. Graham told him no, it would not; he did not want to bind him, or any one, or place anything in their way so that they could not recover every dollar that he owed them; Mr. Wilcox said that he would take the notes as collateral security, but that he would not waive his lien by taking the notes; Capt. Graham assented to this, and thereupon Wilcox took the notes.

Cross-examined.

53 I was present all the time during this interview; I think it was about the 8th of Dec., 1855; there was no written agreement made between them except the notes, so far as I know; the notes were of the usual form of promissory notes.

WM. F. PERKINS.

It is admitted that the notes spoken of by the witnesses, Beebe and Perkins, bore date prior to Dec. 5th, and were not payable until after the St. Lawrence sailed for Cuba.

The libellants claim a report for $2,500, and interest from day of filing the libel.

54 The claimants claim that there is one only, the sum named in the order spoken of by the witness Beebe, and interest thereon.

Steamer St. Lawrence and Owners to Tupper & Wilcox, DR.

1855. Aug.	23.	To 500 clear b'd strips, 17	85	
"		3 cartages, 3*s*	1	13
	24.	200 clear pine plank, 35	70	
"		2,109 ft. clear b'ds, 4	84	36
"		1,202 ft. 2 in. c. pl'k, 4	48	08
"		8 cartages, 3*s*	3	
	25.	75 2 in. spruce pl'k, 2*s*. 6*d*	23	44
"		5 joist, 14		70
"		2 cartages, 3*s*		75
	28.	35 joist, 14	4	90
"		35 2 in. spruce pl'k, 2*s*. 6*d*	10	94
"		497 ft. timber, 16*s*	9	94
"		3 cartages, 3*s*	1	13
	29.	35 2 in. spruce pl'k, 2*s*. 6*d*	10	94
"		1 cartage, 3*s*		38
	30.	300 clear b'd strips, 17	51	
"		2 cartages, 3*s*		75
Sept.	1.	200 clear b'd strips, 17	34	
"		250 " " 17	42	50
"		3 cartages, 3*s*	1	13
	4.	205 ft. 2 in. ash pl'k, $38	7	79
	6.	7,110 ft. 2 in. clear pl'k, 4c	284	40
"		Planing 543 strips, 4½	24	44
	8.	200 clear pine pl'k, 35	70	
"		4 cartages, 3*s*	1	50
	11.	720 2 in. clear pl'k, 4	28	80
"		2,493 ft. 1 in. clear b'ds, $38	94	74
"		480 ft. yel. pine strips, $38	18	24
"		1 cartage from mill, 4*s*		50
"		5 cartages, 3*s*	1	88

1855. Sept.	12.	To 259 deck clapb'ds, 20	51	80
	"	2 cartages, 3*s*		75
	"	250 clear b'd strips, 17	42	50
	15.	2 cartages, 3*s*		75
	"	625 ft. clear lumber, 4	25	
	"	1,857 ft. $\frac{5}{8}$ clear b'ds, $38	70	57
	18.	1,211 $1\frac{1}{4}$ clear pl'k, $30	36	33
	"	40 2 in. spruce pl'k, 2*s*. 6*d*	12	50
	"	4 cartages, 3*s*	1	50
	"	124 ft. 4 in. clear pl'k, 5	6	20
	21.	24 2 in. spruce pl'k, 2*s*. 6*d*	7	50
	"	20 joist, 14	2	80
	22.	35 2 in. spruce pl'k, 2*s*. 6*d*	10	94
	24.	35 do. do. 2*s*. 6*d*	10	94
	"	1 cartage, 3*s*		38
	26.	175 clear b'd strips, 17c	29	75
			$1,326	57

Correct: S. CROOKER.

Exhibit A.

J. B.

Steamer St. Lawrence and owners to Tupper & Wilcox, DR.

1855. Oct.	1.	To 70 2 in. spruce pl'k, 2*s*. 6*d*	21	88
	"	2 cartages, 3*s*		76
	"	956 ft. clear $\frac{5}{8}$ bd's, $38	36	33
	2.	147 dressed boards, 2*s*	36	75
	"	160 clear b'd strip, 17	27	20
	"	35 2 in. spruce pl'k, 2*s*. 6*d*	10	94
	"	3 cartages, 3*s*	1	13
	"	70 2 in. spruce pl'k, 2*s*. 6*d*	21	88
	"	2 cartages, 3*s*		75
	9.	579 ft. clear $\frac{5}{8}$ b'ds, $38	22	01
	"	235 " dressed yell. pine, $38	8	93
	"	100 " bl'k walnut, 9	9	
	"	cartage, 3*s*		38
	10.	1,600 ft. clear 16 ft. b'ds, 4		64
	"	planing 2,000 strips, $4\frac{1}{2}$	9	
	"	472 ft. shelving, $2\frac{3}{4}$	12	98
	"	502 " clear $\frac{5}{8}$ b'ds, $38	19	08
	"	1 cartage, 3*s*		38
	11.	150 clear b'd strips, 17	25	50
	"	1 cartage, 3*s*		38
	"	474 ft. clear 2 in. pl'k, 4	18	96

Oct. 13.	450 ft. 1¼ clear pl'k, 4.....	18
16.	140 " 2 in. " " 4.....	5 60
"	55 " ash plank, $38.....	2 09
"	507 " planed b'ds, $30.....	15 21
"	1 cartage, 3*s*.....	38
22.	187 ft. 1¼ in. clear pl'k, 4.....	7 18
"	66 " 5 in. clear pl'k, 6.....	3 96
"	116 " bl'k walnut, 9.....	10 44
23.	135 ft. 5 in. clear pl'k, 6.....	8 10
25.	35 dressed b'ds, 2*s*.....	8 75
"	372 ft. clear pl'k, 4.....	14 88
Nov. 1.	150 " yel. pine pl'k, $38.....	5 70
"	303 clear b'd strips, 17.....	51 51
"	12 joist, 14.....	1 68
"	2 cartages, 2*s*.....	50
2.	8 joist, 14.....	1 12
20.	10 dressed spruce pl'k, 2*s*.....	2 50
"	1 cartage, 3*s*.....	38
		506 50

Correct: S. CROOKER.

Exhibit B.

J. B.

Endorsed: 261. 13. 189. United States District Court. William W. Tupper et al. vs. The Steamship St. Lawrence, her tackle. Williams & Barnard, proct's for lib'lts. Testimony on reference.

$32 00.

At a stated term of the district court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Monday, the fifth day of October, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Samuel R. Betts, an associate justice of the Supreme Court of the United States.

WILLIAM W. TUPPER et al.
vs.
THE STEAMSHIP ST. LAWRENCE, her tackle, &c. } 13. 189.

This case having been heard on the commissioner's report and exceptions to the same, and agreed by advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the said report and the exceptions thereto be set aside as nugatory; and that all proceedings had or taken in said cause subsequent to the filing of

66 the replication therein, be, and the same hereby are, set aside, with costs to be taxed to claimant.

(Signed) SAM'L R. BETTS.

A copy. GEO. F. BETTS, *Clerk.*

Endorsed: Filed 6th October, 1837.

Libel in Admiralty.

UNITED STATES OF AMERICA,
Southern District of N. Y.

In Admiralty.

To the Honorable Samuel R. Betts, judge of the district
67 court of said district:

The amended libel of William W. Tupper and Edwin R. Wilcox, composing the firm of Tupper & Wilcox, libellants, against the steamship St. Lawrence, her engine, tackle, apparel and furniture, at the time of the filing of the original libel in this action, lying at the port of New York, and within the admiralty and maritime jnsisdiction of this honorable court, and all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, and whereupon the said libellants do allege and articulately propound as follows:

First. That at divers and sundry times between the twen-
68 ty-third day of August and the twentieth day of November, in the year 1855, at the city of New York, your libellants, at the request of John Graham, owner of the said vessel, then lying at the port of New York aforesaid, and within the ebb and flow of the tide, did and performed divers work and labor, and services, in and upon the said vessel, (which is a vessel of about tons burden) for and towards the building, repairing, fitting, furnishing and equipping said vessel, and furnished for the same divers materials for the purpose aforesaid,
69 which work, labor and services, and materials, were, and are of great value, to wit, of the worth and value of twenty-five hundred dollars, and are, and each and every item thereof, is in the schedule hereto annexed, marked schedule A, particularly set forth and described, and the worth and value of each and every item thereof set opposite the same, which said schedule is in all respects correct and true, and your libellants pray that the same may be deemed and taken as part of this libel.

Second. That the said owner now refuses to pay your li-
70 bellants the sum herein before mentioned, and that no part thereof or of the interest thereon from the twentieth day of November, 1855, has been paid.

Third. That at the time of filing the original libel in this ac-

tion, the said vessel had not departed from the State aforesaid, or from the port of New York aforesaid, at which she was when said work and labor was performed, and said materials furnished as aforesaid, to any port or place within the State aforesaid, or any other port or place, but ever since the time when said debts
71 were contracted, has been lying at the port of New York aforesaid.

Fourth. That your libellants claim to have, and have a lien for the claim aforesaid, upon said vessel, her engine, tackle, apparel and furniture, under and by virtue of title 8, chapter viii, of part third of the Revised Statutes of the State of New York, and the acts amendatory thereof.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court. In verification whereof, if denied, your libellants pray leave to refer to the depositions and other
72 proofs to be by them taken, exhibited, produced and offered, as may be necessary, and may accord with the practice of this honorable court.

Your libellants therefore pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel and furniture, and that all persons claiming any right in said vessel, her tackle, engine, apparel and furniture, and especially the said John Graham, may be cited to appear and answer on oath all matters aforesaid, and that this honora-
73 ble court will be pleased to pronounce for the said libel, and that said vessel, her engine, tackle, apparel and furniture, may be condemned and sold, to pay the amount which shall be due to the libellants on the facts aforesaid, to wit, the sum of twenty-five hundred dollars, and interest aforesaid and costs, and that they may have such other and further relief as in law and equity they are entitled to receive.

E. R. WILCOX.

WILLIAMS & BARNARD,
Libellants' Proctors.
J. T. WILLIAMS, *Advocate.*

UNITED STATES OF AMERICA,
Southern District of New York, ss.

74 Sworn to before me, by Edwin R. Wilcox, one of the above libellants, this 12 day of October, A. D. 1857.

[SEAL.] WM. J. SINCLAIR,
Notary Public in New York.

Schedule A.

Steamer St. Lawrence and owner,
To Tupper & Wilcox,

			Dr.	
1855. Aug.	23.	To 500 clear bt. strip, 17	85	
"		3 cartages, 3*s*	1	13
	24.	200 clear pine pl'k, 35	70	
"		2,109 ft. clear bds., 4	84	36
"		1,202 ft. 2 in. c. plank, 4	48	08
"		8 cartages, 3*s*	3	
	25.	75 2 in. spruce plank, 2*s*. 6*d*	23	44
"		5 joist, 14*s*		70
"		2 cartages, 3*s*		75
	28.	35 joist, 14	4	90
"		35 2 in. spruce pl'k, 2*s*. 6*d*	10	94
"		497 ft. timber, 16*s*	9	94
"		3 cartages, 3*s*	1	13
	29.	35 2 in. spruce pl'k, 2*s*. 6*d*	10	94
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Sept'r	1.	200 clear bd. strips, 17	34	
"		250 " " " 17	42	50
"		3 ctgs. 3*s*	1	13
	4.	205 ft. 2 in. ash pl'k, 38	7	79
	6.	7,100 ft. 2 in. clear pl'k, 4	284	40
"		Planing 543 strips, 4½	24	44
	8.	200 clear pine plank, 35	70	
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	11.	720 ft. 2 in. clear pl'k, 4	28	80
"		2,493 " 1 in. clear bd's, 38c	94	74
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	11.	1 cartage from mill, 4*s*		50
"		5 ctges, 3*s*	1	88
	12.	259 deck clapboards, 20	51	80
"		2 ctges, 3*s*		75
	15.	250 elm b'd strips, 17	42	50
"		2 ctges, 3*s*		75
"		625 ft. clear lumber, 4	70	57
	18.	1,857 " ⅝ clear b'ds, 38c	36	33
"		1,211 " ¼ clear pl'k, 30c	12	50
"		40 2 in. spruce pl'k, 2*s*. 6*d*	1	50
"		4 cartages, 3*s*	6	20
"		24 ft. 4 in. clear pl'k, 5	7	50
	21.	24 ft. 2 in. spruce pl'k, 2*s*. 6*d*	2	80
"		20 joist, 14	10	94
	22.	35 2 in. spruce pl'k, 2*s*. 6*d*	10	94

Sept'r	24.	35 2 in. spruce pl'k, 2*s.* 6*d*.....		38
	"	1 cartage, 3*s*.....	29	75
	26.	175 clear b'd strips, 17.....	21	88
Oct.	1.	70 2 in. spruce pl'k, 2*s.* 6*d*.....		76
	"	2 cartages, 3*s*.....	36	33
	"	956 ft. clear $\frac{5}{8}$ bd's, 18c.....	36	75
	2.	147 dressed bd's, 2*s*.....	27	20
	"	160 clear b'd strips, 17.....	10	94
	"	55 2 in. spruce pl'k, 2*s.* 6.....	1	13
	"	3 cartages, 3*s*.....	21	88
	"	70 2 in. spruce pl'k, 2*s.* 6*d*.....		75
	"	2 cartages, 3*s*.....	22	01
	9.	679 ft. clear $\frac{5}{8}$ bd's, 18c.....	8	93
	"	235 ft. dressed yell. pine, 38c.....		9
	"	100 ft. bl'k walnut, 9.....		
	"	1 cartage, 3.....		38
	11.	150 ft. clear b'd strips, 17.....	25	50
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	"	474 ft. clear 2 in. pl'k, 4.....	18	96
	13.	450 $1\frac{1}{4}$ clear pl'k, 4.....	18	
	16.	140 ft. 2 in. clear plank, 4.....	5	60
	"	55 " ash pl'k, 38c.....	2	09
	"	507 " planed b'ds, 30c.....	15	21
	"	1 cartage, 3*s*.....		38
	22.	187 " $1\frac{1}{4}$ clear pl'k, 4.....	7	48
	"	66 " 5 in. clear pl'k, 6.....	3	96
	"	116 " black walnut, 9.....	10	44
	23.	135 " 5 in. clear pl'k, 6.....	8	10
	25.	35 " dressed b'ds, 2*s*.....	8	75
	"	372 " clear pl'k, 4.....	14	88
Nov.	1.	150 " yell. pine pl k, 38c.....	5	70
	"	303 clear b'd strips, 17.....	51	61
	"	12 joist, 14.....	1	68
	"	2 cartages, 2*s*.....		50
	2.	8 joist, 14.....	1	12
	20.	10 dressed spruce pl'k, 2*s*.....	2	50
	"	1 cartage, 3*s*.....		38

Endorsed: 13. 189. United States dist. court, S. district of New York. William W. Tupper et al. vs. The Steamship St. Lawrence, her engine, &c. Amended libel. Williams & Barnard, lib'lts' proctors.

83 Filed Oct. 22d, 1857.

At a stated term of the district court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Saturday, the 24th day of October, in the year of our Lord one thousand eight hundred and

Present, the Honorable Samuel *B.* Betts, an associate justice of the Supreme Court of the United States.

WILLIAM W. TUPPER and al.
vs.
THE ST'SHIP ST. LAWRENCE, her tackle, &c. } 13. 189.

This cause having been brought to argument upon a motion for leave to amend the pleadings and so forth, and after hearing, Mr. Williams for the motion, and Mr. Lane opposed, it is ordered that the libellants have leave to amend their libel in this action, and that the claimants have leave to amend their answer, if they shall be so advised, or that the answer already filed stand as an answer to the amended libel, and that the issue date as of the day of the issue joined upon the original pleadings, and that said cause stand for trial at the next term of this court upon the calendar according to the date of the issue so fixed as aforesaid, upon the payment of the costs of this motion, and of the costs as fixed by the order entered in this action, on the 5th October, 1857.

(Signed) SAM. R. BETTS.

Endorsed: Filed 24 October, 1857.

To the Honorable Samuel R. Betts, judge of the District
86 Court of the United States for the southern district of New York:

The amended claim and answer of Lewis H. Meyer and Edward Stucken, of the city of New York, merchants doing business under the firm name of Meyer & Stucken, claimants of the steamer St. Lawrence, her engine, tackle, apparel, and furniture, and intervening for their interest therein against the libel and complaint of William W. Tupper and Edwin Wilcox, showeth:

First. That they were at the time of filing the original libel in this cause the sole owners of said vessel, and were entitled to the possession thereof, and they pray that they may be al-
87 lowed to defend said vessel.

Second. That they deny on information and belief the allegations contained in said amended libel, and each and every of them.

Third. That these respondents further answering, say that all work, labor, services, and material stated in said amended libel, were so advanced, expended, or furnished upon the personal credit of one John Graham, who was at the time said work, labor, services, and materials were done, performed, and furnished, sole owner of said vessel, and not done, performed, or furnished on the credit of said vessel, and that they have no lien upon the same therefor.

Fourth. And these respondents further answer and say,
88 that after the alleged work, labor, and services *services* performed and materials furnished in and upon said vessel stated

in the amended libel, the said libellants accounted and settled with the said John Graham for and on account thereof; and the libellants took and received payment from him for the amount then agreed on, and discharged the said vessel; and that previous to December 5, 1855, said libellants extended a credit to him for all or any lien they had, if any, upon such vessel, until after
89 the departure from the port of New York, and that she has not since returned to said port.

Fifth. That these respondents were bona fide purchasers in good faith of said vessel without notice of libellants' claim; that they purchased said vessel on the 5th day of December, 1855, and the libel herein was not filed until some time after that day.

Sixth. That all and singular the premises are true.

Wherefore the claimants pray that the libel be dismissed, with costs to be taxed, and that the amount claimed by said libel be declared as not due and payable, and no lien upon said vessel; and that said libellants be adjudged to pay costs herein, and that the claimants have such other or further relief as may be just.

THAD'S H. LANE,
Proctor for Claimants.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Thad's H. Lane, proctor for claimants, being sworn, says that the claimants in this cause are absent from this district, and that deponent is authorized to act for them herein, and that the foregoing answer is true according to his information and belief.

THAD'S H. LANE.

Sworn to before me, this 11 day of November, 1857.
91 THOS. HINWOOD,
Notary Public.

Endorsed: 13. 189. U. S. District Court for the southern district of New York. William W. Tupper and al. ag'st The Steamer St. Lawrence, har tackle, &c. Amended answer. T. H. Lane, proctor for clmts.

Filed Nov. 18, 1857.

At a stated term of the district court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Wednesday, the 16th day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Samuel R. Betts, an associate justice of the Supreme Court of the United States.

WILLIAM W. TUPPER et al.
vs.
THE ST'SHIP ST. LAWRENCE, her tackle, &c. } 13. 189.

This cause being called in its order on the calendar, ordered hearing.

Mr. Williams argues the cause for the libellants.
Mr. Lane " " claimants.
C. A. V.

At a stated term of the district court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Monday the fourth day of January, in the year of our Lord one thou-
93 sand eight hundred and fifty-eight.

Present, the Honorable Samuel R. Betts, an associate Justice of the Supreme Court of the United States.

WILLIAM W. TUPPER et al.
vs.
THE STEAMSHIP ST. LAWRENCE, her tackle, &c. } 13. 189.

This cause having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged and decreed by the court that the libellants recover in this action, against the steamer St. Lawrence, the sum of $600, the draft in the proofs mentioned, together with the amount of materials and supplies
94 furnished the ship, and embraced in two promissory notes in the pleadings mentioned, given for that debt upon the ship, on their being delivered up by the libellants to be cancelled.

And it is further ordered, that unless the parties agree by written stipulation to the amount of such debt and lien embraced in the aforesaid notes, that it be referred to a commissioner to ascertain and report the sum due thereon, together with the amount of the draft before mentioned, $600, and whether the notes have been delivered up to be cancelled.

(Signed) S. R. BETTS.

Endorsed: Filed 4th January, 1858.

U. S. District Court, S. district of New York.

WILLIAM W. TUPPER and EDWIN R. WILCOX
vs.
THE STEAMSHIP ST. LAWRENCE, her engine, tackle, &c.

I hereby consent that the annexed report be confirmed, and
96 that a decree be entered in favor of the libellants herein.

Dated January 21st, 1858.

THAD'S H. LANE,
Proctor for Cl'mt.

District Court of the United States, for the Southern district of New York.

WILLIAM W. TUPPER et al.
vs.
THE STEAMSHIP ST. LAWRENCE, her tackle, &c.
} Commissioner's Report.

In pursuance of a decretal order made in the above entitled cause, on the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellants in this cause, and to report thereon to this court with all convenient speed—

I, Charles W. Newton, U. S. commissioner for the southern district of New York, to whom the matter was referred, do report, that I have been attended by the proctor for the respective parties, and have taken their admissions and proofs offered in support of the libellants' claim, and do find that there is due to the libellants for the matters referred to in the decretal order, the sum of two thousand one hundred dollars and thirty-eight cents, and also
98 that the notes referred to in the decretal order have been delivered up to be cancelled—the sum of $2,100 38.

New York, dated the 20 day of January, A. D. 1858.

All which is respectfully submitted.

CHAS. W. NEWTON,
U. S. Commissioner.

WILLIAMS & BARNARD,
Proctors for Libellants.

[*Endorsed:*]

Vol. 13, No. 189. United States district court for the southern district of New York. William W. Tupper et al. vs. The Steamship St. Lawrence, her tackle, &c. Williams and Barnard, proctors for libel't. Th. H. Lane, for cl'm'ts. Commissioner's report of amount due, $2,100 38.

Filed the 25th day of Jan'y, 1858.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the 26 day of January, in the year of our Lord one thousand eight hundred and fifty.

Present, the Honorable Samuel R. Betts, district judge.

WILLIAM W. TUPPER et al.
vs.
THE STEAMSHIP ST. LAWRENCE, her tackle, &c.

On reading and filing the report of Charles W. Newton, esq., United States commissioner, to whom the above matter was referred, by which there is reported due the libellants for supplies, &c , the sum of two thousand one hundred $\frac{38}{100}$ dollars, on motion of Williams & Barnard, esqs., proctor for the libellant , it is ordered, that the report be in all things confirmed, and that the libellant recover in this action against the said steamship, her tackle, &c., the amount reported due, together with their costs to be taxed.

And, on like motion, it is further ordered, that in pursuance of the act of Congress, passed March 3d, 1847, a summary judgment be, and the same is hereby entered against Edward Stucken, the principal, and John Grahan and Richard Poillon, the sureties on their bond, given on the discharge of the property arrested, for the sum of five thousand dollars, the amount of their said bond, executed on discharging the said steamship from custody.

And, on like motion, it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules of this court, that the libellant ha execution to enforce satisfaction of this decree.

WILLIAMS & BARNARD,
Proctors for the Libellant.

Vol. 18, No. 189. United States district court for the southern district of New York. William W. Tupper and al. vs. The Steamship St. Lawrence, her tackle, &c. Final decree in rem on confirmation of commissioner's report, and summary judgment on bond, under act of Congress, March 3d, 1847.

Filed and entered the 26 day of January, 1858.

U. S. District Court, for the Southern district of New York.

WILLIAM W. TUPPER and al.
vs.
THE STEAMSHIP ST. LAWRENCE,
her tackle, apparel, &c.

SIRS: The claimants (defendants) intend to appeal from the final decree of the court in this cause.

Dated February 2, 1858.

THAD'S H. LANE,
Proctor for Claimant.

To GEO. F. BETTS, ESQ., *Clerk.*
J. T. WILLIAMS, ESQ.,
Proctor for Libellants.

Endorsed: 13. 189. U. S. district court. William W. Tupper et al. vs. The Steamship St. Lawrence, her tackle, apparel, &c. Notice of appeal. Thad's H. Lane, proc. for cl'm'ts. To Geo. F. Betts, esq., clerk U. S. district court for the southern district of New York.

Filed 2 Feb'y, 1859.

of the United States of America, for the Southern district of New York, in the second circuit.

WILLIAM W. TUPPER and al., Libellants and Appellees,
vs.
THE STEAMSHIP ST. LAWRENCE, her tackle, &c., Edward Stucken, claimant and Appellant.
} Bond for Costs.

Know all men by these presents, that we, Edward Stucken, Adolphus Le Barbeer and Conrad Charles Meletta, are held and firmly bound unto the above named libellants and appellees, in the sum of five thousand dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

105 Sealed with our seals, and dated the eleventh day of February, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas the above named claimant and appellant has prosecuted an appeal to the circuit court of the United States, for the southern district of New York, in the second circuit, to reverse the decree rendered in the above entitled suit, by the judge of the district court of the United States, for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to

106 effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

EDWIN STUCKEN, [SEAL.]
By THAD. H. LANE, *Att'y.*
A. LE BARBER, [SEAL.]
C. MELETTA. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 11 day of February, 1858, before me.

JOSEPH BRIDGHAM,
U. S. Com.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

Adolphus Le Barber and Conrad Charles Meletta, being duly sworn, depose and say, and each for himself says, that he resides in the city of New York, and that he is worth the sum of five thousand dollars, over and above all his just debts and liabilities.

A. LE BARBIER.
C. MELETTA.

Sworn to this eleventh day of February, A. D. 1858, before me.
JOSEPH BRIDGHAM,
U. S. Com.

The sufficiency of the sureties to the within bond approved.
N. Y., February, 1858.
District Judge.

[*Endorsed:*]

Vol. 13, page 189. U. S. district court. William W. Tupper et al., libellants and appellees, vs. The Steamship St. Lawrence, her tackle, &c. Edwin Strucken, claimants and appellants. Bond for costs on appeal. Th's H. Lane, appellants' proctor.
Filed this 11 day of February, 1858.

Circuit Court of the United States for the Southern district of New York.

LEWIS A. MEYER and EDWARD STUCKEN, owners of the Steamship St. Lawrence, her tackle, apparel, &c., Appellants,
vs.
WILLIAM W. TUPPER and EDWIN R. WILCOX, Libellants.

To the Honorable the Circuit Court of the United States for the Southern district of New York, in the second circuit:

The appeal of the above named appellants showeth: That on or about the twenty-fourth day of December, in the year one thousand eight hundred and fifty-five, the above named libellants exhibited their libel in the district court of the United States for the southern district of New York against the steamship St. Lawrence, her tackle, apparel, &c., and all persons intervening in her behalf, claiming twenty-five hundred dollars, for supplies furnished said vessel, praying, among other things, for the reasons set forth in said libel, that these appellants might be condemned to pay the demands of said libellants and costs in said libel mentioned, which libel was afterwards amended.

110 That process having been issued out of said court, these appellants, Lewis H. Meyer and Edward Stucken, did, on or about the tenth day of April, in the year one thousand eight hundred and fifty-six, file their answer to said libel in the said district court, praying that the said libel be dismissed, with their costs in that behalf, (which said libel was afterwards amended,) as by reference to said *label* and said answer will more fully appear.

That the said cause came on to be heard before the Honorable Samuel R. Betts, judge of the said district court, on or about
111 the 15 day of December, A. D. 1857, upon the depositions and proofs taken in said cause, and the testimony adduced

by the respective parties, and the said judge having advised thereon, on the 4 day of January, 1858, made a decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that the libellants in said cause recover against the steamer St. Lawrence the sum of six hundred dollars, together with the amount of materials and supplies furnished the vessel, and embraced
112 in two promissory notes, as by reference to the said decree will more fully appear, under which decree a reference was had to Charles W. Newton, esq., U. S. commissioner, who reported there was due to the libellants the sum of two thousand one hundred dollars and thirty-eight cents, ($2,100 38,) which report, on the 26th day of January, 1858, was confirmed by the said court by the final decree thereof.

And these appellants are advised and insist that the said decree is erroneous, inasmuch as the said libellants were not entitled to recover in the premises.

And these appellants, for these and other reasons, appeal from the whole of said decree in favor of said libellants to the next circuit court, to be held in said district; and on the said appeal they intend to have said cause heard anew in the circuit court on the pleadings and proofs in the district court, and on other proofs to be introduced in the said circuit court; and they pray that the said decree, and every part thereof, may be reversed, with costs, or such other decree thereupon made as to the said circuit court shall
114 seem just, and that the said appellees be condemned to pay to these appellants their costs and damages in the premises.

THAD'S H. LANE,
Proctor for Appellants.

February 11, 1859.

Endorsed: U. S. circuit court. 13. 189. Lewis H. Meyer & al. vs. William W. Tupper & al. Petition of appeal. Thad's H. Lane, proctor.

Filed 12 Feb'y, 1858.

Service of the within notice of appeal is hereby admitted.

115 Feb'y 11, 1858.

J. T. WILLIAMS.

Apostles filed in the U. S. circuit court February 16, 1858.

To the Honorable Samuel Nelson, Judge of the Circuit Court of the United States for the Southern district of New York:

The claim and answer of Lewis H. Meyer and Edward Stucken, of the city of New York, merchants, doing business under the firm name of Meyer & Stucken, claimants of the steamer St. Lawrence, her engine, tackle, apparel and furniture, and intervening for their interest therein, against the libel and complaint of William W.

Tupper and Edwin R. Wilcox, showeth, upon information and belief, as follows:

First. That they were, at the time of filing the original libel in the district court of the United States for the southern district of New York, the sole owners of said vessel, and were entitled to the possession thereof, and they pray they may be allowed to defend said vessel.

Second. That they deny, on information belief, the allegations contained in said libel and amended libel, and each and every of them.

Third. That all work, labor, services and materials stated in said libels were so advanced, expended or furnished upon the personal credit of one John Graham, who was at the time said work, labor, services, and materials were done and furnished, sole owner of said vessel, and not done, performed, or furnished, on the credit of said vessel, and that they have no lien upon the same therefor.

Fourth. That after the alleged work, labor, and services performed and materials furnished in and upon said vessel, in and upon the amended libel, the said libellants accounted and settled with the said John Graham, for and on account thereof, and the libellants took and received payment from him for the amount they agreed on, and discharged the said vessel; and that previous to December 5, 1855, said libellants extended a credit to him for all and every liens they had, if any, upon said vessel, until after her departure from the port of New York, and that she has not since returned to said port.

Fifth. That these claimants and appellants were bona fide purchasers in good faith of said vessel, without notice of libellants' claim, if any they had, and that they purchased said vessel on the 5 day of December, 1855, and that the libel was not filed until some time after that day.

Sixth. That all work, labor, services and materials, stated in said libel, if any ever were performed, advanced, expended or furnished, were so performed, advanced, expended or furnished, whilst said vessel belong to and was owned in the port of New York, and a domestic vessel, and that said lien, if any ever existed, was not a maritime lien and could not be enforced in admiralty, and that neither this court nor the district court of the United States have or had any jurisdiction to enforce said claim or lien, or of the subject-matter of this suit.

Seventh. That all and singular the premises are true.

Whereupon the claimants and appellants pray that this libel be dismissed with costs to be taxed, and that the amount claimed by said libel be declared not due and payable, and no lien upon said vessel, and not enforceable in admiralty, or in this or the United States district court, and that said libellants be adjudged

to pay costs herein, and have such other or further order, judgment, or relief, as may be just.

L. H. MEYER.

THAD'S H. LANE,
Proctor for Claimants and Appellants.

Sworn to before me, this 28 day of August, 1858.
CHARLES W. NEWTON, *U. S. Com.*

Circuit Court of the United States for the Southern district of New York.

WILLIAM W. TUPPER and EDWIN R. WILCOX, Libellants and Appellees, vs. THE STEAMSHIP ST. LAWRENCE, her tackle, &c., Appellants. } Notice.

Please to take notice, that Richard Poillon, George Bell, William Broadman, James B. Bond, Edwin Supton, Smith Crooker, Edward Miles, George Miln, and Charles Donohue and Thad. H. Lane, will be examined (de bene esse) on the part of the appellants in the above entitled cause, before me, (a commissioner duly appointed by the circuit court of the United States for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided,) at my office, United States court buildings, 41 Chambers street, in the city of New York, on the first day of April next, at 10 o'clock in the forenoon of that day, at which time and place you are hereby notified to be present, and put interrogatories, if you shall think fit.

Dated New York, the 30th day of March, A. D. 1859.

Yours, &c.,
R. E. STILWELL,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

To J. T. WILLIAMS,
Proctor for Appellees.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss.

Be it remembered, that on this second day of April, in the year of our Lord one thousand eight hundred and fifty nine, I, R. E. Stilwell, a commissioner duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil

causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, United States court buildings, No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Thaddeus H. Lane, to testify and the truth to say, on the part and behalf of the claimants and appellants, in a certain suit or matter of controversy now depending and undetermined in the court of the United States for the southern district of New York, wherein William W. Tupper and Edwin R. Wilcox are libellants and appellees, and the Steamer St. Lawrence, her tackle, apparel, and furniture, and Lewis H. Meyer and Edward Stucken, are claimants and appellants. And the said Thaddeus H. Lane, being about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Thaddeus H. Lane, and he did thereupon depose, testify, and say as follows, viz:

During the whole of the year 1855, and until about the 1st of May, 1856, the steamer St. Lawrence was a domestic vessel, owned in the city of New York, and was such when the materials, work, &c., mentioned in the libel, was furnished and done upon her, as well as when she was libelled. The amount of the draft upon Meyer and Stucken, for six hundred and fifty dollars or thereabouts, and mentioned in the evidence taken before the commissioner in the United States district court, was there admitted to be a lien upon the steamer. This was an error. The amount of the draft was for work done upon another steamer. All the work and materials furnished or done upon the St. Lawrence, are embraced in the schedules produced in evidence before the commissioner by the libellants in the U. S. district court, and for which notes were given for the full amount, and which are the notes referred to in the testimony taken before the commissioner in the U. S. district court.

THAD'S H. LANE.

Sworn to before me, this 2 of April, 1859.

R. E. STILWELL,
U. S. Com.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, R. E. Stilwell, a commissioner duly appointed by the circuit court of the United States, for the southern district of New York,

n the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that the same is taken pursuant to the rule of the U. S. Supreme Court in such cases made and provided.

I further certify, that a notification of the time and place of taking the said deposition signed by me was made out and served on the adverse party to be present at the taking of the said deposition, and to put interrogatories if he or they might think fit.

I further certify, that on the 1st and 2d day of April, in the year of our Lord one thousand eight hundred and fifty-nine, I was attended by and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statement, and after carefully reading the same to the witness, *a* subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the same in the court for which the same was taken.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this second day of April, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-third.

R. E. STILWELL,
United States Commissioner, duly appointed by the Circuit Court of the United States, for the Southern district of New York, in the second circuit.

At a special term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Tuesday, the twentieth day of September, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

WILLIAM W. TUPPER, Libellant and Appellee,
vs.
THE STEAMSHIP ST. LAWRENCE, &c., Claimant and Appellant.

The appeal from the district court in this case coming on to be heard—

Mr. Williams reads the testimony on the part of the libellant and appellee,

Mr. Donohue reads the testimony on the part of the claimants and appellants.

Mr. Williams argues the case on the part of libellant and appellee.

Mr. Donohue argues the case on the part of claimant and appellant.

Decree affirmed.

At a term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Thursday, the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

WILLIAM W. TUPPER and EDWIN R. WILCOX, Libellants and Appellees,
vs.
THE STEAMSHIP ST. LAWRENCE, her tackle, apparel and furniture, Claim't and App'lt.

This cause having been brought to hearing upon an appeal to this court from a final decree of the district court for the district aforesaid, and the pleadings, proofs, and allegations of the respective parties having been duly heard and considered, it is hereby ordered, adjudged, and decreed by the said court now here, that the said decree of the said district court be and the same is hereby in all things affirmed, with costs, to the said libellants, which said decree, with the costs in said district court duly taxed, and the interest thereon to the date of this decree, with the said costs of this court, the same having been duly taxed at the sum of fifty-nine dollars and ninety cents, amounts in the whole to the sum of twenty-five hundred and seventy-one dollars and ninety-one cents.

And whereas, by the said decree of the said district court, summary judgment was duly entered against Edward Stucken, as principal, and John Graham and Richard Poillon, as sureties, for the sum of five thousand dollars, the amount of the bond and stipulation given by them to the marshal of said district upon procuring the discharge of said steamboat from arrest, and now, on mo-

tion of J. I. Williams, proctor for said libellants, ordered that said summary judgment be in all things affirmed; and on like motion, it is further ordered that summary judgment be and the same is hereby entered against Adolphus L. Barber and Charles Meletta, the sureties upon the bond, and stipulation given by them to the said libellants upon the appeal from said decree of said district court to this court, for the sum of five thousand dollars, the amount of said last mentioned bond and stipulation, and that the said libellant have execution against the said Edward Stucken, John Graham, Richard Poillon, Adolphus L. Barber, and Charles Melletta, to satisfy this decree.

To the Honorable the Supreme Court of the United States of America:

The petition of appeal of Lewis H. Meyer and Edward Stucken, claimants of the steamer St. Lawrence, respectfully showeth: that heretofore, and on or about the twenty-first day of December, 1855, William W. Tupper and another filed their libel, in the district court of the United States for the southern district of New York, claiming that they had furnished materials and necessaries to said vessel, and praying that said vessel be condemned and sold to pay therefor; that thereafter an answer was duly filed, taking issue on such libel, and the cause was duly heard in said district court by a decree thereof, on the fourth day of January, 1858. The said court adjudged that the libellants recover against said vessel, the St. Lawrence, the sum of two thousand one hundred $\frac{38}{100}$ dollars; that the petitioner duly prosecuted his appeal from said decree to the circuit court of the United States for the southern district of New York, in the second circuit; and the same was duly heard in said court, and that thereafter the said circuit court did order, adjudge and decree that said decree of the district should be affirmed with costs; that your petitioner respectfully insists that the said decree is erroneous, and he appeals from the said decree, and each and every part thereof, and prays that the Supreme Court of the United States may proceed to hear the said cause anew on new allegations and proofs, and to reverse and annul said decree of the said circuit court, and to restore to the appellant all rights which he has lost by reason of said decree,

B. ROELKER,
Proct. for Appellant.

LEWIS H. MEYER,
EDWARD STUCKEN,
Appellants.

[*Endorsed:*]

United States Supreme Court. Lewis H. Meyer and Edward Stucken, claimants of the steamer St. Lawrence, appellants, vs.

William W. Tupper and another, libellants and respondent. Petition of appeal. B. Roelker, proctor for app't.

Due service of a copy of the within petition of appeal is admitted. October 8, 1859.

J. T. WILLIAMS,
Proctor for Respondent.

Filed Oct. 8, 1859.

Citation.

By the Honorable Samuel Nelson, one of the judges of the Circuit Court of the United States for the Southern district of New York, in the second circuit.

To William W. Tupper and Edwin R. Wilcox:

Whereas Lewis H. Meyer and Edwin Stucken, claimants of the steamer St. Lawrence, her tackle, &c., has lately appealed to the Supreme of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said William W. Tupper, Edwin R. Wilcox, against the said Lewis H. Meyer and Edward Stucken, and has filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, in the southern district of New York, in the second circuit, the eighth day of October, in the year of our Lord 1859, and of the independence of the United States the 84.

S. NELSON.

Endorsed: U. S. Supreme Court. Lewis H. Meyer and Edward Stucken, claimants and appellants, vs. William W. Tupper and another, libellants and respondents. Citation. B. Roelker, for appell.

Due service of a copy of the within citation is hereby admitted.

J. T. WILLIAMS,
Proct. for Resp'ts.

Oct. 8, 1859.

Filed Oct. 8, 1859.

Circuit Court of the United States of America, for the Southern district of New York, in the second circuit.

LEWIS H. MEYER AND EDWARD STUCKEN, claimants of the Steamer St. Lawrence,
vs.
WILLIAM W. TUPPER AND ANOTHER, and EDWARD R. WILCOX, *Libalats* and Respondents.

Know all men by these presents, that we, Lewis H. Merer and Charles Luling and Charles Stucker, are held and firmly bound unto the above named William W. Tupper and Edwin R. Wilcox, in the sum of fifty-two hundred dollars, to be paid to the said Tupper and Wilcox; for the payment of which, well and truly to be made, we bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the first day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas the above named Lewis H. Myer and another *has* prosecuted their appeal to the Superior Court of the United States, to reverse the decree rendered in the above entitled suit by the judge of the circuit of the United States for the southern district of New York: Now, therefore, the condition of this obligation is such, as if the above named Meyer and Stucken shall prosecute his appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

L. H. MYER, [SEAL.]
CHAS. LUDING, [SEAL.]
CHARLES STUCKEN. [SEAL.]

Sealed and delivered, and taken and acknowledged this 1st day of October, 1859, before me.

THAD'S H. LANE,
Notary Public.

October 8th, 1859.
Approved. S. NELSON.

Filed Oct. 8, 1859.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

Charles Luding and Charles Stucken, each for himself separately, being duly sworn, deposes and says that he is a householder, dwelling in the city of New York, and is worth the sum of eleven thousand dollars over and above all his just debts and liabilities.

CHAS. LULING,
CHAS. STUCKEN.

Sworn to this 5th day of October, A. D. 1859, before me.

THAD'S H. LANE,
Notary Public for the State of New York.

Filed 20th Dec., 1859.

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HENRY SPEAR, Printer and Stationer, 133 Pearl and 86 Beaver Sts.

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Supreme Court, U. S.

LEWIS H. MEYER AND EDWARD STUCKEN, Appellants,

vs.

WILLIAM H. TUPPER AND EDWIN R. WILCOX, Appellees.

This was an action commenced by the Appellees in the District Court of the United States, for the Southern District of New York, by libel against the Steamboat St. Lawrence, to enforce a lien given by the laws of the State of New York.

The supplies (lumber) were furnished in New York, where the vessel belonged, by the appellees, who resided in New York. The vessel was claimed by the appellees on a sale subsequent to the repairs. After the repairs were finished, the appellees received the notes of John Graham, (who ordered the lumber, &c.,) in payment, which notes were not due when the vessel left New York.

The libel was filed after the claimants purchased the vessel, that is after December 5th, 1855, and sometime previous to the maturity of the notes.

FIRST.—This contract is one coming fully within the principle of Gibbons *vs.* Ogden, 9 Wheaton, 204; and McGuire *vs.* Card, 21 How. 248; Allen *vs.* Newbury, 20 How. 244. The supplies were furnished by a resident to a resident of New York, in New York.

1. The fact that the vessel was afterwards, or had been used in foreign trade, did not extend the

jurisdiction. The contract under which the work was done, had no reference to that.

2. She was on no voyage, employed in none, but was a hulk in a home port.

3. Furnishing a coat to a man about to go to sea, or to Florida, would equally make it a contract within the Admiralty jurisdiction.

A foreign vessel in one of our ports is the subject of federal power, under the direct principle of Gibbons *vs.* Ogden.

4. To hold that this contract is within the Admiralty jurisdiction, would be to say, that if a vessel was under a register, and hired to go from New York to Brooklyn, that contract would be within the jurisdiction of the Admiralty, because the vessel was in the foreign trade, or might be employed in it.

SECOND.—There is no maritime lien in this case which the Court can enforce; the only jurisdiction in the Admiralty in rem, is of foreign vessels.

See the Genl. Smith, 4 Wheat., 438.

THIRD.—The only lien recognized by Admiralty law for repairs and supplies, is stated in the case of Pratt *vs.* Reed, 19 Howard 359, and that lien requires the want of means in the owner, as also his want of credit to obtain supplies in any other way than a pledge of his vessel, and then it must be in a foreign port.

FOURTH.—The Admiralty has no jurisdiction to enforce a domestic lien (see McGuire *vs.* Card, 21 Howard 248.) This is fully sustained by his Honor Judge Nelson, in Poag *vs.* The steamboat McDonald, who uses the following language.

(See Judge Nelson's opinion accompanying.)

1. The state cannot make a lien to be enforced in the Admiralty. It cannot confer jurisdiction on the federal court.

2. The right to be enforced in Admiralty must be a recognized maritime right. Merely a lien by mortgage or contract, cannot invest the Admiralty with jurisdiction to enforce it, even if the vessel be the subject of maritime commerce.

   The John Jay, 17 Howard, 400.
   2 Wood and Minott, 296.
   2 Brown's Civil Law, 116.

3. Congress and the law has only vested the District Court with Admiralty jurisdiction, and that is all they can exercise.

4. The contract must have reference to commerce between the states, or with foreign nations, under the one, grant of power, and under the other "the Admiralty maritime jurisdiction". Congress cannot extend it.

FIFTH.—The rule of the Supreme Court does not preserve any jurisdiction. If the Court did not have jurisdiction before that rule, it did not acquire it by that rule; and if the jurisdiction existed, that rule does not divest it.

1. The power of the Supreme Court to make rules is to be found in 5th Statutes at large, p. 518, sec. 6, and does not permit that Court to curtail or extend the *jurisdiction*.

2. The mode of practice and the right to fix it, neither extends to opening the Court to a suitor, or the shutting it on him.

SIXTH.—No lien was intended by the parties here, or existed by maritime law, and none of the circumstances to justify the idea of such a lien existing, or that it was looked to by them appears.

See Pratt *vs.* Reed, 19 How. 359.

It would be an anomaly to see an Admiralty Court extend a lien in Admiralty against a vessel in a home port contracted by the owners when it refused in the case of a foreign vessel, unless the owner be without the means and credit.

SEVENTH.—If there could be a lien, it was waived by the taking of the notes for the amount, or the credit was extended until they became due.

1. The idea of the notes being given as collateral security (as testified by Perkins, see page 14 of the case,) is an absurdity. The notes made the claim no better. They must have been paid, either in settlement or in extension of the time of payment; no other construction can be given.

2. The moment the notes were given and received, the credit was extended until they fell due, especially as against innocent purchasers of the vessel. These notes matured after the vessel left this port, and long after the appellants became owners, and no claim could be made until after this time.

   Innocent purchasers for value cannot be affected, and no lien can be enforced until after the credit has expired.

   The Bark Chusan, 2d Story Reports, 468.
   The Brig Nestor, 1 Sumner R, 86.

3. Whilst the notes remained in circulation or outstanding, it operated as a suspension of any lien. The notes had never been surrendered previous to the filing of the libel, nor were they returned to be cancelled.

   The Schooner Action, Olcott's Reports, 288.
   Ramsay *vs.* Allegre, 12 Wheat. 613.

THAD'S H. LANE.
Of Counsel for Appellants.

SUPREME COURT

OF THE UNITED STATES,

In Admiralty.

WILLIAM W. TUPPER, et al.
Libellants and Appellees,
vs.
LEWIS H. MEYER, et al.
Claimants of the Steamboat St. Lawrence,
Appellants.

POINTS OF LIBELLANTS AND APPELLEES.

FIRST.

1. The contract upon which this action is brought is, in its nature, a maritime contract.

2. The Federal Courts have cognizance of all cases of maritime jurisdiction.

3. This cause, arising out of a maratime contract, is necessarily of maritime jurisdiction, and therefore within the jurisdiction of this Court.

a. Contracts for repairs and supplies of vessels, when executed, have been, without exception, treated as maritime contracts, and cognizable in the admiralty as well in England as upon the continent, and in this country. The persons who furnish or perform them, are known in the maritime vocabulary as "material men."

2 Brown's Civil and Maritime Law pp. 75–81. Conkling's Admiralty, p. 52 to 68 and cases there cited. Statute 3 and 4 Vict. c. 65. 1 Kent's Com. 379. 3 Id. 168–170. Jacobson's Sea Laws 357 note. Argument of Sir Leoline Jenkins before the House of Lords, on the competency of material men

to sue, originally in the Admiralty. Life of Sir L. Jenkins, vol. 1, p. 76. The Favorite, 2 C. Robinson's R., 236. The Gen. Smith, 4 Wheat., 438. St. Jago de Cuba, 9 Wheat. 409. Ramsay, *v.* Allegre, 12 Wheat., 611. Andrews *v.* Wall, 3 How., 568. (See also, on page 573, remarks by Story, J., commenting upon Ramsay *v.* Allegre.) Peyroux *v.* Howard, 7 Pet., 324. The Consolato and the Ordinance of 1681, gave to these creditors a preference to all others. See 12th Rule, as amended.

In Maguire *v.* Card, the Court say: "The contract in that case (Allen *v.* Newbury,) was one of affreightment, but we perceive no well-founded distinction between that and a contract for supplies furnished to a vessel." No one will dispute that a contract of affreightment is a maritime contract. Benedict's Admiralty, p. 154, § 272.

A contract pursuant to which money is furnished to be used in obtaining repairs and supplies, has always been deemed to be a maritime contract, cognizable in the Admiralty. Flanders on Shipping, pp. 179, 180, § 156.

b. It is not necessary that a lien should exist in order that the Court may have jurisdiction. If there be no lien, the proceeding is *in personam.* If there be a lien, it may be *in rem.* In either case the jurisdiction is complete. See 12th Rule of this Court, as amended.

Conkling's Admiralty, p. 54; 2 Kent's Com., 379. Andrews *v.* Wall, 3 How., 572, 573.

In the case of Pratt *v.* Reed, is there any doubt although there was no lien,—yet that an action *in personam* might have been maintained? Were a sailor, by his contract to waive his right of lien upon the vessel, would he thereby be prevented from maintaining an action in the Admiralty *in personam*?

Lien gives the right to seize the vessel, in the first instance, and bring her into Court to abide the event of the action,—but in no case can it affect the question of jurisdiction. Can any one doubt that in an action *in rem*, if it should be ascertained that the lien had been waived, or that there was no lien that the Court has the power to permit an amendment of the pleadings, and suffer the libellant to proceed against the owners, who should have come into Court as claimants, *in personam*, instead of sending him out of Court to commence *de novo?*

The Court always loses jurisdiction over the *res* as soon as it is bonded, either under the Act of 1847, or under the general Admiralty practice. 1 Newbury, R., 432.

"A lien is neither a *jus in re*, nor a *jus ad rem.*" 1 Mason's R., 319.

c. In every case in which this Court has dismissed the libel for want of jurisdiction, it has not been because there was no lien, but because the contract was not in its nature a maritime contract, or because it appeared affirmatively, that the vessel was engaged in purely internal commerce—holding, in the latter case, either that "contracts growing out of the purely internal commerce of the State, &c., are generally domestic in their origin and operation, and could scarcely have been intended to be drawn within the cognizance of the Federal Courts,"—as in the case of The New Jersey Steam Navigation Co. *v.* Merchants' Bank, cited in Maguire *v.* Card, 21 How., 247; or, that "By the Constitution, Congress has power to regulate commerce with foreign nations and among the several States, and within the Indian Tribes, the provision among the several States, limits the power of Congress in the regulation of commerce to two or more States; consequently a State has power

to regulate a commerce exclusively within its own limits, but beyond such a limit the regulation belongs to Congress. The Admiralty and Maritime jurisdiction is essentially a commercial power, and it is necessarily limited to the exercise of that power by Congress," as in the case of Jackson *v.* Magnolia, 20 Howard, 304.

In Minturn *v.* Maynard et al., 17 How., 477, the Court say: "There is nothing in the nature of a maritime contract in the case," and therefore dismiss the libel for want of jurisdiction. In Pratt *v.* Reed, 19 How., 359, the Court did not doubt its jurisdiction, but held that there was no lien. In Thomas *v.* Osborn, 19 How., 22, the Court did not doubt its jurisdiction, but dismissed the libel because there was no lien, the action being *in rem.* Had it been *in personam*, no doubt would have existed as to the right of the libellant to maintain his action. Ramsay *v.* Allegre, 12 Wheat., was a suit *in personam* for repairs, &c., done to a ship. It does not appear where she was owned, but only that the repairs, &c., were to equip and prepare her for a voyage on the high seas. The jurisdiction of the Court (though the question was raised) was not doubted. (See Commentary on this case, by Story, J., in Andrews *v.* Wall, 3 How., p. 573.) In the People's Ferry Co. *v.* Beers, 20 How., 393 the Court decided that the contract in question, (a contract to build the hull of a ship,) "was not in its nature a maritime contract," and therefore dismiss the libel for want of jurisdiction. In the case of Allen *v.* Newbury, 21 How., 244, the Court do not doubt that the contract was a maritime contract, and hence *prima facie* within its jurisdiction; but it appearing affirmatively that the contract was one "of shipment of goods between ports and places of the same State," the Court held that the jurisdiction should be confined to the State Courts.

In the case of Maguire *v.* Card, the Court did not doubt that the contract (for supplies) is in its nature a maritime contract and *prima facie* within the jurisdiction of the Court,—but it appearing affirmatively that "the vessel was engaged exclusively within the limits of the State," (California,) they held that the case should be left to the jurisdiction of the Courts of that State. In the case of Roach *v.* Chapman, 22 How., 129, the contract (for materials, boilers, &c., for a ship, building at Louisville,) was held to be *not* a maritime contract, and the Court had therefore no jurisdiction in the Admiralty. The Court say, p. 132: "A contract for building a ship, or supplying engines, lumber and other materials for her construction, is clearly not a maritime contract." The Court, therefore, having no jurisdiction over the subject-matter of the contract, could not enforce any lien given either by common law or by State enactment.

In the case of Minturn *v.* Maynard, 17 How., 477, which was an action for a balance of account the Court say: "There is nothing in the nature of a maritime contract in the case." The libel was therefore dismissed for want of jurisdiction. In the case now before the Court, it appears affirmatively that the vessel in question was, at the time the repairs were done, engaged in commerce between different States and countries. See Record, p. 15, fol. 53; also, p. 23, fol. 89.

d. In cases arising out of contract, the jurisdiction of the Federal Courts in Admiralty, depends not upon the question of locality, as in cases of Tort,—nor yet upon the question of lien,—but solely upon the nature of the contract; and the sole question is—"Is the contract in question, in its nature, a maritime contract?"

In Andrews *v.* Wall, 3 How., pp. 572 and 573, the Court say: "Over maritime contracts the Admiralty posesses a clear and established jurisdiction capable of being enforced *in personam* as well as *in rem.*"

In Moorwood *v.* Enequist, 23 How., 493, the Court say: "They do not seem to deny that these are maritime contracts, according to any correct definition of the term, but rather require us to abandon the whole course of decision on this subject, and return to the fluctuating decisions of English Common Law Judges."

In Phil. &c. R. R. Co. *v.* The Phil. &c. Towboat Co., 23 How., 215, the Court say: "The jurisdiction of Courts of Admiralty in matters of contract, depends upon the nature and character of the contract; but in tort it depends entirely on locality."

In the New Jersey Steam Nav. Co. *v.* Merchants' Bank, 6 How., 389, the Court say: "The jurisdiction in all cases is maintained on the ground that the subject-matter was of Admiralty cognizance."

In the Pacific, 1 Blatch., p. 586, the Court say: "Maritime contracts do not depend upon locality, but upon the subject-matter and nature of the service to be pertormed."

In Jackson *v.* Magnolia, 21 How., 303, the Court say: "No terms could be more complete than those used in the Constitution to confer this jurisdiction. In all cases of Admiralty and Maritime jurisdiction, such suits may be brought in the District Courts." On p. 306, the same learned Judge says: "The Vice-Admiralty Courts of this country, under the Colonial Government, exercised jurisdiction over all maritime contracts, and over torts and injuries, as well *in ports* as upon the high seas, and this was the jurisdiction conferred upon our Courts by the Constitution."

c. If a contract for repairs and supplies furnished to a vessel, whose owner resides abroad, be in its nature a maritime contract, how should it be less so if the owner resides at home? Does the residence of the owner change the nature or character of the contract, and render it less maritime in its nature and character? No authority can be found that favors such a distinction,—and on principle it is simply absurd.

SECOND.

Having jurisdiction of the case, the Court will proceed to give the libellants all the relief they are entitled to in the premises. The local law giving a lien upon the vessel, this Court will give effect to and enforce that lien.

2 N. Y. R. Stats. (m. p.) 493.

1. This has been the practice of this Court from the earliest time.

The Genl. Smith, 4 Wheat., 438; Peyroux *v.* Howard, 7 Pet., 324; New Orleans *v.* Phoebus, 11 Pet., 175, 184; not to mention the numberless cases in the different Circuit Courts, in which the liens given by the different State statutes have been enforced.

2. The 12th Rule of this Court, as it stood at the time this cause was commenced and tried in the District Court, confers this right, and makes it the duty of the Courts to enforce and give effect to such liens.

a. This rule, although it could not confer jurisdiction, yet when jurisdiction, as in this case, ex-

ists irrespective of it, the rule has then the force of an Act of Congress. See Act of March 2, 1793, § 7.

This Court, in the case of Maguire *v.* Card, 21 How., has interpreted this rule, giving it the effect of an enactment or law. They say, (p. 25): "We have, at this Term, amended the 12th Rule of the Admiralty, so as to take from the District Courts the right of proceeding *in rem* against a domestic vessel for supplies and repairs."

The language here used implies:

(1.) That the right existed under the rule, or how could it be taken away by an amendment of the rule?—*no right* could exist if there were no jurisdiction,—of course, the rule did not confer jurisdiction.

(2.) Amending the rule, so as to take away the right to proceed *in rem*, implies that the right to proceed *in personam* remains.

(3.) That contracts for repairs are equally maritime contracts as those for supplies.

b. Speaking of the local law, Conkling (Admiralty Jurisprudence, &c., p. 57,) says: "Not that it can confer jurisdiction on the Courts of the United States; but if it gave a lien and the contract be maritime, then the lien being attached to it, can be enforced according to the mode of administering remedies in the Admiralty. The State laws furnishing the rule to ascertain the rights of the parties, and thus assist in the administration of the proper remedies when the jurisdiction is vested by the laws of the United States." See also, New Orleans *v.* Pheobus, 11 How., 184, quoted with approbation in Roach *v.* Chapman, 22 How., 132.

c. This cause having been commenced before the modification of the 12th Rule, is not to be affected by such modification.

3. The 34th section of the Judiciary Act of 1789, makes it the duty of the Federal Courts to adopt the laws of the several States as the rule of decision in cases where they apply.

a. It is true that the language of the section confines its operation to the Courts of Common Law,—but, practically, it is perfectly clear that the section, or a principle of law equivalent to it, has always applied, and always must apply, equally to Courts sitting in Admiralty.

The Admiralty Court sittting in Massachusetts, allows 6 per cent. interest, in conformity with the laws of that State; while Court of Admiralty sitting in New York, allows 7 per cent., in conformity to the statutes of that State. It is eqnally clear that in cases of usury, as well as in all cases where the rights of litigants differ, by reason of different statutes in different States, the Admiralty Courts, sitting in such States respectively, follow the respective statutes of such States.

Benedict's Admiralty, §§ 348, 349.

b. Although some of the decisions in the Circuit Courts, and perhaps in this Court, have not clearly developed this, as the principle upon which they were based; yet the cases of the Genl. Smith and Peyroux *v.* Howard, were based upon this principle, if we may rely upon the *dicta* of the Court in the case of Orleans *v.* Phoebus, 11 How., 184, where the Court, speaking of those decisions, say: "The contract was treated as a maritime contract, and the lien under the State law, was enforced in Admiralty, upon the ground that the Court, under such circumstances, had jurisdiction of the contract as maritime, and then the lien, being attached to it, might be enforced according to the mode of administering remedies in the Admiralty. The local law

could never confer jurisdiction upon the Courts of the United States."

This language is quoted with approbation in the case of Roach *v.* Chapman, 22 How., 132, where it is held that a contract to build the hull of a vessel is not in its nature maritime, and therefore not within the jurisdiction of the Federal Courts.

4. It is a universal principle of law, repeatedly recognized in Courts of Admiralty as well as in Courts of Equity, that in case the Court has jurisdiction over a cause of action in virtue of any feature of the case, it will proceed and exercise jurisdiction over the whole case, and execute the whole law appertaining thereto, although such exercise involve mattersnot with in the original jurisdiction of the Court.

Benedict's Admiralty, p. 11, § 17; 5 Cranch, 61; 1 Pet., 328, 340.

In The Pacific, 1 Blatch., 585, the Court say: "The contract is an entirety. It must be wholly of Admiralty cognizance, or else it is not at all within it. There cannot be divided jurisdiction. But as the contract is an entirety, the failure to comply with any part of it went to the whole, and gave to the libellant such remedy as the nature and character of it entitled him to, whether of Admiralty or common law cognizance."

THIRD.

The St. Lawrence was a foreign vessel. If so, neither jurisdiction nor lien will be disputed.

1. There is no proof that Capt. Graham, who it is proven, was her owner, resided in the State of New York.

a. Mr. Lane testifies, p. 32, that the vessel was, during the period of her repairs, "a domestic vessel, owned in the City of New York." Whether or not she was a domestic vessel, would depend upon facts. No fact whatever is stated. If he meant to say that Captain Graham resided in, and was a citizen of the State of New York, he has certainly failed to say so.

By the term "domestic," he probably does not mean to say that she was engaged in commerce exclusively between ports and places within the State of New York. At all events he has not so testified.

His language is consistent with her being a foreign vessel, in any sense of that phrase. He says, she was "owned in the City of New York." So she was; if her owner was temporarily within that city, though his residence should have been in Europe or elsewhere.

2. There being no proof that she was a domestic vessel, (the Court having jurisdiction over the subject-matter of the suit,) there is no fact proven to oust the Court of jurisdiction.

FOURTH.

The jurisdiction of the Court is admitted. See Decretal Order, p. 10, fol. 34, permitting it to go to a Commissioner for computation of the amount due without trial.

Again, the lien of a part of the claim is admitted. The cause was each time tried upon the same testimony without objection, and the admission is nowhere withdrawn. P. 14, fol. 50; p. 15, fol. 54.

Mr. Lane contradicts this admission, or rather makes statements that are inconsistent with it. Record, p. 32, but it is plain that he had no personal knowledge upon the subject, and he is clearly overborne by the testimony of Crooker; and the admission of counsel on the trial stands as before.

a. It is not claimed that an admission of a party can confer jurisdiction; but it is claimed that such an admission is to be construed as an admission of the existence of those facts which are necessary to confer jurisdiction.

b. If it be objected that the decree embraces a larger sum than was admitted to be a lien. It is answered. The claimants cannot now be heard to complain of the *amount* reported to be due by the Commissioner, for they have expressly waived any such objection, and consented that the report be confirmed, and that a decree might be entered for the whole amount so reported. See p. 24; fol. 96.

FIFTH.

It appears from the testimony of Perkins, (p. 14, fol. 54,) that the parties had contracted for a lien, and afterwards bargained that it should not be waived, &c.

At all events, it appears that the libellants declined to give credit to Graham, and supposed they had a lien, possessory or otherwise, and that Graham encouraged that belief, and so obtained the repairs; or afterwards obtained possession, by the stipulation that it should continue. Neither he nor his assignees, or transferees, should now be heard to object that no lien existed.

Where the parties have contracted for a lien—where it appears affirmatively that the work was done upon the credit of the ship—and the contract is in its nature and character a maritime contract, it cannot well be disputed that an action *in rem* can be maintained in the Admiralty to enforce such lien.

The Marion, 1 Story's R., p. 68.

SIXTH.

The case comes within the doctrine laid down in Pratt *v.* Reed. It was a case of repairs done to a foreign ship; and it appears affirmatively that the owner had no credit in the port of the repairs.

1. It does not appear that she was a domestic ship.

2. It does appear that she was engaged in commerce and navigation between foreign countries. (See p. 15, fol. 53, where it is admitted that she sailed for Cuba, soon after the repairs were done.) The answer also states, (p. 23, fol. 89,) that she departed from the port of New York previous to December 5, 1855, and had not, at the time the answer was sworn, (November 11, 1857,) returned to that port. It may therefore be fairly inferred that he owner resided in a foreign state or country.

3. The terms foreign and domestic, when applied to ships as a test of jurisdiction, is not predicable of the residence of the owners, but only of the fact of her being engaged in commerce with foteign states, or solely within the limits of some particular state.

a. This is the only sense in which the foreign or domestic character of a ship can be of any practical importance, so far as the question of jurisdiction is concerned.

b. In none of the cases in which the exercise of jurisdiction has been declined by this Court, has the residence of the owner of the ship been referred to. All has turned upon the commerce in which the ship was engaged,—namely, whether exclusively within the State, or between different states or nations.

It appears from the testimony of Perkins, that Graham had no credit in New York; at all events, that the libellants refused to rely upon his personal responsibility, and looked to their lien.

I. T. WILLIAMS,

Of Counsel for Libellants and Appellees.